



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

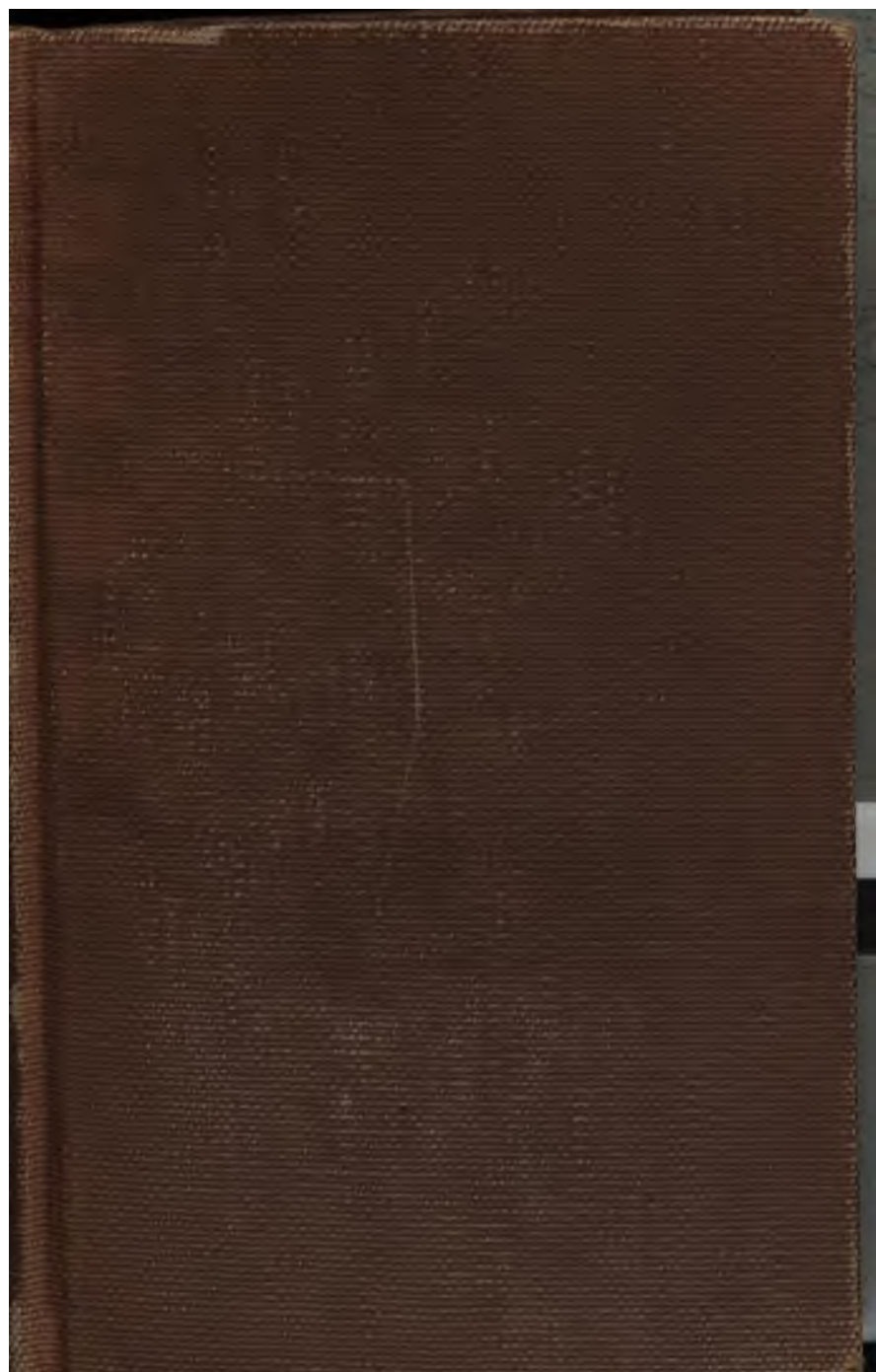
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



C 9568.45



Harvard College Library

FROM

Pickman Bequest





FEASTS AND FASTS:

AN ESSAY

ON

THE RISE, PROGRESS, AND PRESENT STATE

OF

THE LAWS

RELATING TO

SUNDAYS AND OTHER HOLIDAYS,

AND

Days of Fasting;

WITH

NOTICES OF THE ORIGIN OF THOSE DAYS, AND OF THE
SITTINGS AND VACATIONS OF THE COURTS.

BY

EDW^d VANSITTART NEALE, ESQ.

OF LINCOLN'S INN, BARRISTER-AT-LAW.

Fora Judicialia ponunt
Murmura, et oclusis foribus trahit otia Prætor.
Tunc nos templa vocant, tunc indulgere Tonanti
Tempus, et ingenium sacris impendere rebus.
Poscunt operam cessare per urbes,
Et per rura volunt studiis inimica profanis.

MANTUANUS, De Diebus Sacris.—Book I.

3' LONDON:

JOHN MURRAY, ALBEMARLE STREET;
STEVENS AND NORTON, BELL-YARD.

1845.

C9568.45

1860, July 13.
Pickman Request.

LONDON:
C. ROWORTH AND SONS, BELL YARD,
TEMPLE BAR.

34.382
28

TO

J. W. FARRER, ESQ.

ONE OF THE MASTERS OF THE HIGH COURT OF CHANCERY,

This Essay,

BEGUN AT HIS SUGGESTION

AND CARRIED ON UNDER HIS KIND ENCOURAGEMENT,

IS DEDICATED,

BY HIS AFFECTIONATE SON-IN-LAW,

EDWARD VANSITTART NEALE.

PREFACE.

IN offering this Essay to the public the Author feels that he owes some explanation of that mixture of legal details with matter of a more popular character, which it will be found to contain. It may be urged, not without reason, that such subjects are better kept apart; that the general reader will be discouraged by the dryness of legal disquisition; while the more professional eye will be repelled by the sight of so much matter unfit for professional ends.

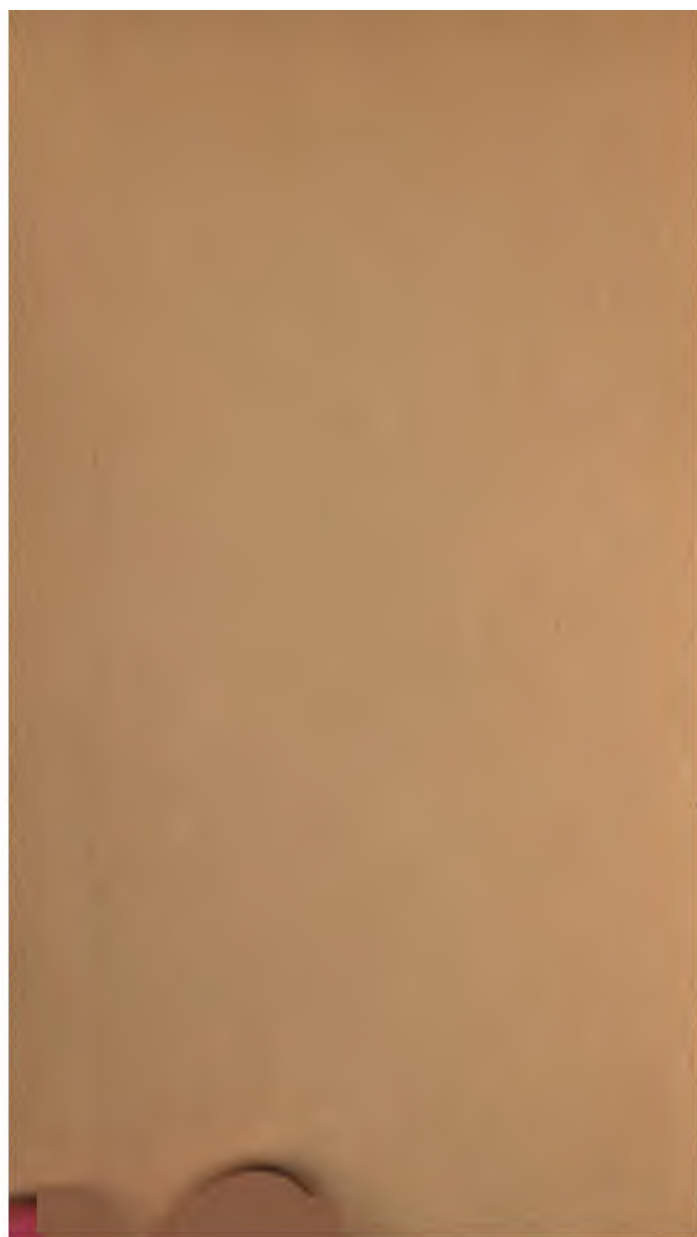
But while he admits that this objection may, to some extent, be well founded, he must plead the peculiar nature of the subject as an excuse for the course pursued, if not a justification of it.

The operative English law in respect to Feasts and Fasts is of very limited extent, and of not

very frequent application. But, taken in the more extended view which has been adopted in these pages, the subject seemed to be one supplying abundant materials of a nature calculated to interest more than one class of readers. Yet, while availing himself of these extensive stores of more interesting information, and endeavouring from them to compile a work suited for such as read in order to learn, the Author felt desirous, also, of producing one, minute enough in its account of the present state of the English law, as to seasons consecrated by religious observances, to be useful to those who might read in order to act. And, as scientific travellers have often introduced into the narrative of their adventures, the minute details of observations interesting, in their minuteness, only to such as are accustomed to equal accuracy in observing; and have thus given to their work a greater value in the eyes of the scientific world, without destroying its interest for readers of a less meditative class; so the Author ventures to hope that he may be successful in producing a treatise, useful in practice, without forfeiting, by its usefulness, the claim to a more general interest.

Of the book in its present form he believes

it may be said truly, that it brings together upon the subjects of which it treats a considerable body of information, which has never been so brought together before. In more than one learned work, indeed, much information may be found collected, upon different branches of the subject, here treated of as a whole. Thus, "Bingham's Ecclesiastical Antiquities" will furnish full details upon the canons of the Early Church in respect to the observance of holy seasons, and no small amount of information as to the imperial legislation upon the same matters. In Van Espen's great work on ecclesiastical law, and in Ayliffe's "Parergon," many of the canons and laws of the middle ages upon the same subject may be found, added to much of an earlier date. Gibson's "Codex," and Burn's "Ecclesiastical Law" will furnish the student with a sufficiently complete view of the present English canonical and statute law, in respect to feasts and fasts; and Spelman's work, on the "Origin of the Terms," makes some advance towards pointing out the connection between the ancient canonical regulations in respect to times when pleas should not be held, and the practice of the English courts of law. But in none of these



CONTENTS.

CHAPTER I.

| | Page |
|---|------|
| LAWS ANTERIOR TO THE ENGLISH LAW AS TO LEGAL PROCEEDINGS IN HOLY SEASONS . | 1 |

CHAPTER II.

| | |
|---|----|
| ENGLISH LAWS AS TO LEGAL PROCEEDINGS IN HOLY SEASONS | 35 |
|---|----|

CHAPTER III.

| | |
|--|----|
| LAWS AS TO LABOUR AND BUSINESS IN HOLY SEASONS, ANTERIOR TO THE REFORMATION | 86 |
|--|----|

CHAPTER IV.

| | |
|--|-----|
| OF THE GROUNDS UPON WHICH CERTAIN DAYS FORMERLY KEPT HOLY IN ENGLAND WERE OBSERVED | 138 |
|--|-----|

CHAPTER V.

| | |
|---|-----|
| OF THE LAWS AS TO LABOUR AND BUSINESS ON SUNDAYS AND HOLIDAYS SINCE THE RE- FORMATION | 175 |
|---|-----|

| | Page |
|---|------------|
| CHAPTER VI. | |
| LAWS AS TO AMUSEMENTS IN HOLY SEASONS | 205 |
| CHAPTER VII. | |
| ACTUAL STATE OF THE ENGLISH LAW IN RE- SPECT TO HOLY SEASONS | 239 |
| CHAPTER VIII. | |
| POSITIVE LAWS RESPECTING THE OBSERVANCE OF FEASTS | 273 |
| CHAPTER IX. | |
| POSITIVE LAWS RELATING TO THE OBSERVANCE OF FASTS | 308 |
| CHAPTER X. | |
| PRACTICE OF THE COURTS, ETC., AS TO THE OB- SERVANCE OF HOLIDAYS | 368 |
| <hr/> | |
| APPENDIX | 397 |
| INDEX | 405 |

LIST OF CASES CITED.

| | Page | | Page |
|---|----------|---|----------|
| Angell v. Westcombe . . . | 394 | Goodwin v. Lugar . . . | 394 |
| Anon. . . 259, 262, 366, 388 | | Hales v. Owen | 390 |
| Armitage v. Rugby . . . | 388 | Hall v. Welchman . . . | 387 |
| Asmole v. Goodwin . . . | 390 | Halsey's case | 366 |
| Atkinson v. Jamieson . . . | 262 | Harrison v. Smith | 390 |
| Baddeley v. Adams . . . | 244 | ——— v. Tait | 387 |
| Bedoe v. Alp | 243 | Harrod v. Gibson | 391 |
| Bloxome v. Williams . . . | 267, 269 | Harvey v. Broad . . . | 253, 254 |
| Boys v. Morgan | 393 | Howard v. Smith | 391 |
| Britton v. Standish . . . | 366 | Hunt v. Clent | 244 |
| Brookes v. Warren . . . | 261 | Johnson v. Coltson . . . | 262 |
| Bullock v. Edginton . . . | 393 | King v. Myers | 259 |
| Cambridge, Chancellor of, v. Walgram | 366 | Le Fevre v. Molineux . . | 387 |
| Cecil, Sir ——'s case . . . | 259 | Lilly v. Gompertz | ib. |
| Charnock v. Smith . . . | 389 | MacIleham v. Smith . . . | 257, 259 |
| Comyns v. Bowyer . . . | 263 | MacIntosh v. Great West- ern Railway Company . . . | 395 |
| Crepps v. Durden . . . | 270 | Mackale's case | 247 |
| Creswell v. Green | 390 | Manners v. Bryan | 394 |
| Davies v. Salter | 253, 254 | Mannock, Anne, case of . | 365 |
| Doe v. Roe | 83 | Maxwell v. Phillips . . . | 395 |
| Dormer, Eliz., case of . . . | 365 | Mesure v. Britten | 390 |
| Drury v. Defontaine . . . | 264, 366 | Middleton, Ex p. | 271 |
| Featherstonehaugh v. At- kinson | 261 | Milburne v. Lyster | 393 |
| Fennel v. Ridler | 267, 269 | Mills v. Brown | 82 |
| Figgins v. Willie | 255 | Moffat v. Carteret | 255 |
| Fish v. Broket | 250 | Moore, Sir W.'s case . . . | 260 |
| Foster, Dr., case of | 366 | Morgan v. Johnson | 257, 258 |
| Fraser v. Miller | 391 | Page v. Fawcet | 250, 253 |
| Furnell v. Smith | ib. | | |

| | Page | | Page |
|--------------------------|------------|-----------------------------|---------------|
| Pater v. Groome | 255 | Shoebridge v. Irvin . . . | 390 |
| Pit v. Welby | 248 | Smith v. Sparrow | |
| Prinsor's case | <i>ib.</i> | | 268, 269, 270 |
| Rex v. Barnes | 366 | Sparrow v. Cowper . . . | 255 |
| — v. Brotherton . . . | 264 | Swann v. Broome . . . | 241 |
| — v. Cox | 262 | Taskmaker v. Hundred of | |
| — v. Foster | 366 | Edmonton; <i>Addenda to</i> | |
| — v. Law | <i>ib.</i> | p. 246 | xxi |
| — v. Lovell | <i>ib.</i> | Taylor v. Phillips . . . | 257 |
| — v. Sheriff of Middle- | | | |
| sex | 388 | Waite v. Stoke . . . | 243, 246 |
| — v. Vachel | 365 | Walgrave v. Tailor . . . | 258 |
| — v. Webb | <i>ib.</i> | Wathen v. Beaumont | 390, 391 |
| — v. Whitmarsh . . . | 267, 268 | Wheeler v. Green . . . | 389 |
| — v. Younger . . . | 266, 270 | Whitechurch, Ex p. . . | 260 |
| Roberts v. Monkhouse . | 257 | White v. Marton | 258 |
| — v. Quickenden | | Wilkes v. Perks | 389 |
| | 390, 391 | Winston v. Brown . . . | 366 |
| Sandiman v. Breach . . | 272 | Woolaston v. Wright . . | 388 |
| Scott v. Larkin | 391 | | |

**LIST OF ABBREVIATIONS EMPLOYED,
AND OF EDITIONS REFERRED TO.**



- Ayl. Par.....Ayliffe, J., *Parergon Juris Canonici Anglicani*. Lond. 1726.
- Bal. Can. Apost. Balsamon, Theod., *Canones Apostolorum*. Lutet. Par. 1520.
- Bede de T. R.....De Temporum Ratione. Op. Om. II. Basle, 1563.
- Bede Mart. Martyrology, Cantab. 1722; with his Ecclesiastical History.
- Beleth. Belethus, J., *Rationale Divinorum Officiorum*; at the end of Durandus.
- Bing. Bingham, Jos., *Orig. Eccl.* Op. Om. London, 1726.
- Breviarium Romanum....The Roman Breviary, as reformed after the council of Trent.
- Id. Ant. The same before the council of Trent.
- C. 1, 2, 1; or 1, 2, 1.... *Decretum Gratiani*, Part 2, Cause 1, Question 2, Chapter 1. Sometimes the initial words of the chapter are added.
- 1 C. 2, 1 Justinian's Code, Book 1, Title 2, Law 1. Sometimes the initial words of the law are added.
- C. Theod. 1, 2, 1.....Code of Theodosius, Book 1, Title 2, Law 1.
- Camden, Anglica, Normannica, Hibernica, &c. Francf. 1603.
- Camden, Britannia, by Gough. 3 vols. London, 1789.
- Clavis Calendaria, by J. Brady. London, 1812.

xvi LIST OF ABBREVIATIONS EMPLOYED,

- D. 1, 2, 1.....Digest, Book 1, Title 2, Law 1. The initial words of the law are sometimes added.
- D'Achery.....Achery, Lucas, *Spicilegium*. Par. 1728.
- De Cons. 1, 2 Decretum Gratiani, Part 3, Distinction 1, Chapter 2.
- Diceto.....See Twysden.
- Dis. 1, 2.....Decretum Gratiani, Part 1, Distinction 1, Can. 2.
- Dresser de F. D. Dresser, Matthæus, de *Festis Diebus*. Witem. 1588.
- Duc. or Duc. Glos..... Ducange, C.D., *Glossary*. Par. 1736.
- Durand. Durandus, Gul., *Rationale Divinorum Officiorum*. Ven. 1609.
- Fitz. N. B. Fitzherbert, Ant., de *Natura Breuium*. London, 1794.
- Gibbon, Edw., *Roman Empire*, edited by the Rev. H. H. Milman. London, 1838.
- Gib. Cod.....Gibson, Edmund, Bp., *Codex Juris Ecclesiastici Anglicani*. Oxford, 1761.
- Gl. Glanville, Ranulph. de, *Tractatus de Legibus Angliæ*. London, 1780.
- Hamp..... Hampson, R. T., *Medii Ævi Calendarium*. Lond. 1841.
- Hild. d. D. F..... Hildebrandt, Joachim, de *Diebus Festis*. Helmst. 1701.
- Hosp. d. F. C.....Hospinianus, Rodolph., de *Festis Christianorum*. Tig. 1612.
- Hosp. de T..... Id., de *Templis*. Tig. 1603.
- Hoveden, Roger, *Annales*. London, 1596.
- Knyghton, Henry de See Twysden.
- Labbeo, or Labb. or Lab. *Sacrorum Consiliorum Collectio*, by Phil. Labbeus; Gab. Cossartius; N. Coletus; and J. D. Mansi. Flor. and Ven. 1759 to 1798. 31 vols.

- Lamb. Lambard, W., 's Eirenarcha, or Office
of Justice of the Peace. London,
1610.
- Mantuanus, J. Baptista, de Sacris Diebus. Argent. 1528.
- Mart. Rom. Martyrologium Romanum, by Car-
dinal Baronius. Col. Arg. 1608.
- Math. Par. Vit. Alb. S. } Matthew Paris, Vitæ Sancti Albani
Abb. } Abbatum. London, 1640.
- Mor. D. H. Moreri, L., Dictionnaire Historique.
Paris, 1769.
- Nov. Justinian's Novels.
- Petrus D. N. Petrus de Natalibus. Venice, 1506.
- Pol. Verg. Vergilius, Polydorus, de Invento-
ribus Rerum. Amst. 1676.
- Ranke, Leopold, History of the Popes ; translated by Miss
Austin. London, 1840.
- Regino de Ecc. Dis. Abbot, Libri duo de Synodalibus,
Causis, &c. Lips. 1640.
- Rush. Rushworth, John, Historical Collec-
tions. London, 1721.
- Rymer, Thomas, Fœdera. London, 1794.
- Soc. Socrates, Scholasticus, Ecclesiastical
History ; Hist. Eccl. Scriptores
Græci. Col. Agr. 1612.
- Sozom. Sozomen, Hermias, Ecclesiastical
History ; Ib.
- S. P. B. Scriptores Anglicanæ Historiæ post
Bedam. Frankfort, 1601.
- Sparrow Ant., Bp., Collection of Articles and
Canons, &c., of the Church of
England. London, 1671.
- Spel. Con. Spelman, Sir H., Concilia. London,
1639.
- Spel. O. of T. Idem, On the Origin of the Terms ;
Posthumous Works. Oxford, 1698.
- Sulpitius Severus, D. V. } De Vita Beati Martini. Op. Om.
B. M. } Amst. 1665.

xviii LIST OF ABBREVIATIONS, ETC.

- Twys. *Historiæ Anglicanæ Scriptores Decem.* Edited by Roger Twysden. 1652.
- Van Esp. *Jus Ecclesiasticum Universum*, by B. Z. Van Espen. Louvain, 1753.
- Wilk. Con. Wilkins, David, *Concilia Magnæ Britanniæ et Hiberniæ.* London, 1737.
- Wharton, A. S. Wharton, Henry, *Anglia Sacra.* London, 1691.
- X. 1, 2, 1. *Decretals*, Book 1, Title 2, Law 1.

CORRIGENDA ET ADDENDA.

Page 21, line 3, note ^m to be placed after "compromise," page 20, last line.

Page 29, line 7 from the bottom, after *Evangelists*, add "of St. Stephen and St. John the Baptist."

Page 86, line 12 from bottom, for *Duke* read Earl.

Page 131, note ^r, after *Christmas*, add "The Circumcision."

Page 151, St. Oswald. Since these sheets went to press, the author has discovered that his inexperience in the Martyrology of the British Saints has led him into giving an account of St. Oswald, King of the Northumbrians, instead of St. Oswald, Bishop of Worcester and Archbishop of York, who is the person mentioned in the list of saints' days enumerated by the Synod of Worcester. That he should have been betrayed into this error, he however scarcely regrets; for the legend of the royal saint is, perhaps, the most interesting of those which he has been induced to notice. But a short account of the Archbishop is added, to complete the narratives contained in the fourth chapter.

St. Oswald was a relation of Archbishop Odo, and a zealous supporter of Archbishop Dunstan, through whose influence he was chosen first Bishop of Worcester, and then Archbishop of York, both of which sees he held conjointly. He appears to have been active in introducing more extensively the monastic discipline into England, and in promoting celibacy generally amongst the clergy. He repaired one, and built another church at Worcester. The abbey of Ramsey, in Huntingdonshire, recognized him as its founder; and a monk of that abbey, who is said to have written under Ælfric, Archbishop of Canterbury, about ten years after St. Oswald's death, appears to have been the first narrator of his history; which was compiled in very

fair Latin, chiefly from this source, by Eadmerus, a friend of Archbishop Anselm, about ninety years later. It abounds in stories of miracles; but it dwells also—on the charity of St. Oswald, displayed in feeding “innumerable poor,”—and on his humility, which led him daily to wash the feet of twelve poor men of those whom he supported. The day before his death, we are told, he stood gazing intently on the sky; and when his friends asked why he did so, replied, “I am contemplating the place whither I am going . . . and to-morrow, though I be silent, ye will sufficiently know why I thus look up. That eternal salvation, for which on this earth I have hitherto laboured, is at hand. To-morrow will not pass away before my Lord will introduce me to it.” And so it was. On the morrow, after he had washed the feet of the poor men as usual, and completed the recitation of a portion of the psalms, he expired. Over his bier, as he was carried to the tomb, a dove was seen to hover, and a ball of fire descended from heaven and rested upon it; indicating, as Eadmerus tells us,—the one, “the innocence and simplicity of his heart;”—the other, “the fervency of his love to God and his neighbour.” When the body had been carried into the church where it was to be buried, these heavenly appearances rested over the spot where he was to be laid; and when his corpse was consigned to the earth, solemnly withdrew.—Eadmerus, *Life of St. Oswald*, Wharton, A. S. vol. ii. As to the date of the first life of St. Oswald, see Wharton, preface to vol. ii. p. 15, and vol. i. p. 103. St. Oswald held the see of Worcester thirty-two and that of York twenty-five years; he died Feb. 27th, A.D. 994; and his body was translated Oct. 15, A.D. 1002, by his successor, Bishop Adulph.—See Chron. de Mailros, in Gale, *Rerum Ang. Scriptores*, Oxford, 1691, vol. i. p. 153; William of Malmsbury de Pont. Angl. iv. p. 270.

Page 158, second marginal note, for 31 read 21.

Page 169, first marginal note, for 9 read 6.

Page 184, line 13, after *Prayer Book*, add, “except that it omits the feasts of the Conversion of St. Paul and of St. Barnabas.”

Page 218, see the law of Canute, cited at pages 110 and 325, as to marrying on festivals, or during Lent.

Page 246, note *, add, In *Taskmaker v. Hundred of Edmonton*, 1 Str 406, it was held, that a party robbed while going to church in his carriage has his action still against the hundred; the statute applying only to travellers. But Chief Baron Comyns intimated that "it might have been otherwise had he been going to make visits."

Page 310, line 2, for *Sozoman*, read Sozomen.

Page 324, note ^d, for *Maunday*, read Maundy.

Page 326, note ^h, add, However Pope Nicholas I. expressly extends to Lent the permission to fight in a case of necessity, which he recognizes in respect to the Lord's day, and other great festivals.—Cap. 46; Lab. xv. 418. See page 99.

Page 331, line 4, for *Macon*, read Mayence.

Page 372, St. Valentine. Two Saints of this name are mentioned by Baronius as commemorated upon this day; both of whom are reported to have been first scourged, and then beheaded, under the Roman emperors. The first was a priest; for the place of whose suffering the Flaminian Way at Rome is assigned; and its date fixed in the reign of Claudius. The second is called Bishop of Interamnæ, which it would seem may be either Terni, or Teramo, on the river Trontino, in Abruzzo Ultra.—Playfair, Geog. iii. 213, 215. No date is given for his martyrdom.—Martyr. Rom. The Breviary commemorates the Priest alone.

FEASTS AND FASTS.

CHAPTER I.

LAWS ANTERIOR TO THE ENGLISH LAW AS TO LEGAL PROCEEDINGS IN HOLY SEASONS.

Introduction—Question on O'Connell's Trial—Plan of Work—Roman Holidays—their Number—legal Business upon—Christian Festivals—the Lord's Day—the Sabbath—the Epiphany—Easter—Pentecostal Days—Christmas—Days of Apostles and Martyrs—of Bishop's accession—of joyful events—Fasts—in Lent—the Great Week—the Four Seasons—Weekly—Laws of the Emperors as to Legal Proceedings—on Sunday—in Lent—at Easter—Exempted Cases—by Canon Law—Pirates—Grain—Justinian's Holidays—Legal Proceedings—on Sunday—Councils—of Tarragona—of Macon—of Rheims—on Fasts and Feasts—Capitularies of Theodulphus—Council of St. Medard—Greater Litanies—St. Michael's Day—Rogation Days—Legal Holidays—Law Proceedings upon—Directions of Nicholas I.—Council of Tribury—of Erfurth—Practice of the Roman Courts—Judicial authority of the Bishops.

AMONG the various legal questions which arose during the progress of the late trial of Mr. O'Connell and his associates in Ireland, one occurred bearing upon a subject of more general interest than such questions commonly excite. It was on a Saturday night that the jury retired to consider their verdict ;

Question as to the legality of receiving a verdict after twelve on Saturday night, raised on the trial of Mr. O'Connell ;

twelve o'clock had nearly arrived, and they had not come to any such verdict as the judge could receive. Under these circumstances the Attorney-General suggested that the Court should be adjourned till Monday morning, as he apprehended that the verdict could not be received after twelve o'clock on the Saturday night. Mr. Justice Crampton, anxious to save the jury, who were agreed upon the substance of their verdict, but had not delivered it in a proper form, from a confinement through the succeeding day, inquired repeatedly whether it was quite certain that the verdict was not receivable after twelve o'clock, and suggested that both sides should consent either to receive the verdict or let the jury go home. But the Attorney-General would not agree to the latter course, and the counsel for the traversers would not consent to the former. And although the Attorney-General did not go the length of saying that the verdict if received would not hold, and Mr. Justice Crampton expressed his conviction that verdicts had often been taken after twelve o'clock on the Saturday, yet the fear, in a case of such importance, of doing anything which might make the trial nugatory, ultimately prevailed, and the Court was adjourned till the Monday.

the fear of
this being the
case led to an
adjournment
of the Court;

Now two questions arise out of this state of facts.

1st. Could the verdict have been lawfully received after twelve o'clock on Saturday night?

2ndly. Could the Court be adjourned after that time?

The first question, as we have seen, was considered by the learned judge as too doubtful to justify him in acting upon the affirmative answer.

The affirmative of the second appears to have been thought, by the learned counsel for the traversers, too clear to admit of discussion. The answer to both questions is involved in the larger inquiry, as to what things, according to the law, may and what may not be done by a court of law upon a Sunday. And it is this inquiry, with the kindred subjects of investigation to which it naturally leads, that in the present pages it is proposed to pursue.

The field of investigation is wider than may at first sight appear. For the laws or customs of England in respect to Sunday are not confined to the proceedings of the courts of law, but bear also upon other acts of a public nature, and upon the pursuits and amusements of the private citizen. Here then our subject begins somewhat to expand.

But a far more extensive horizon opens before us if we extend our view from the present to the past, and seek to learn, not only what the law of England upon the matters already indicated actually is, but also how it settled into its present state. And yet our proposed subject peculiarly invites such an in-

the power to do which was not disputed.

Inquiry suggested by this question as to what may be legally done on a Sunday by a court of law;

leads to similar inquiry in respect to individuals,

and to the investigation of the laws bearing upon the subject historically;

and that from
a period an-
tecedent to
the rise of
English law.

vestigation. The days marked out under our present laws, by an exemption from judicial proceedings or public business, or an interference with the occupations or pleasures of the private citizen, are but the remains of a much greater number, formerly included in a similar exemption or subjected to a similar control. If we would rightly understand the existing laws, it is almost necessary that we should pass under our review the more extensive system of which they once formed a part. But then we find ourselves led on to yet deeper researches. The law of England in these matters can scarcely be said to be of indigenous growth. It was the affirmation in this country of the general customary ecclesiastical, or canon law of Europe. But these ecclesiastical usages have their roots in the early ages of Christianity: they bear deep traces of the legislation of the later periods of the Roman Empire under which they grew up; and that legislation is in its turn affected by the earlier law, whereof it was in part a modification. So that if we would trace the English laws, in respect to days marked out by the exemptions or interference before noticed, to their origin, we can scarcely stop short of the laws made by the emperors of Rome on the same points. Nor, it is hoped, will this inquiry, far back as it may appear to extend, be devoid of instruction or destitute of interest; especially in the present day, when more

importance than has for some time past been conceded to them, seems to be again attached to the thoughts and actions of men in the middle and early Christian ages, the period when the laws upon the subject of our research grew up. It is therefore with the laws of the emperors of Rome upon the matters alluded to, that it is proposed to begin our inquiry; and from them to trace the course of legislation downwards, through the canon law of other parts of Europe, and the enactments made in our own country, to the present time. And as the topics of the cessation from judicial proceedings or public business, and the control exercised over the occupations and amusements of individuals, at certain prescribed seasons, though connected, are yet distinct, it is intended to treat of them separately.

Extent to which it is proposed to carry this investigation.

That the division of days into *juridici et feriat*, The Romans recognized numerous legal holidays, judicial and non-judicial, did not arise out of the modes of thought peculiar to the Christian world, must be well known to every classical scholar. Before the age of Augustus the number of days upon which, out of reverence to the gods to whom they were consecrated, no trial could take place at Rome, had become a resource upon which a wealthy criminal could speculate as a means of evading justice;^a and Suetonius enumerates among the praiseworthy acts of that emperor, the cutting off Their number diminished by Augustus;

^a Cicero in Verrem, Act. Prin. c. 10.

yet amounted
to 130 in
A.D. 161.

How far the
exemption
from judicial
business ex-
tended.

Cases which
might be
brought be-
fore the courts
in vacation.

from the number thirty days, in order "that crime might not go unpunished nor business be impeded by delays."^b Yet it appears that in the time of Marcus Antoninus the number of dies feriati, or judicial holidays, still amounted to 130.^c On these days, which included a month at harvest time and another during the vintage, no man could be compelled to appear before the prætor, though summoned to trial: if, however, he chose to attend, and sentence was pronounced, it was binding.^d

But no inconsiderable number of cases were enumerated, to which the privilege was held not to apply. Was it necessary to appoint guardians of the person or property of an infant, to compel them to fulfil their duties, to hear reasons alleged for being exempted from that task, or to prove the age of a party (of which the evidence might be lost by delay); did a mother claim possession of an estate in the name of the child in her womb; or was the property of a legatee, or a cestui que trust, in danger of being lost; was the case one where irretrievable damage might be done; or did the suit relate to the opening of a will, or the naming a guardian to an estate of which it was doubtful whether an heir would be found, or to the grant of maintenance to a child, a parent or a patron; was its object to

^b Sueton. Vit. Aug. 32.

^c Capit. Vit. M. A. A.; Pothier, Pand. ii. 568.

^d D. ii. 12, 1, Nequis messium.

oblige an heir to take possession as heir of an estate believed to be left to him in trust for others (in which case, if he died before this legal act was performed, the *cestui que trust* was without remedy); or to have a value put upon an atrocious injury (where the damage done would require to be seen in order to be estimated), or to procure the enfranchisement of a slave, whose liberty had been bequeathed to him:—in all these cases the objection, that the day was a judicial holiday, was not suffered to prevail.^e All suits for the recovery of liberty were included in a similar exemption from the general law as to *dies feriati*.^f The exemption extended also to the trials of persons accused of having availed themselves of their rights over a market, to exact sums to the prejudice of the public interest.^g And if the case was one in which either the death of the party accused, or the lapse of time would take away the right of action, the trial might be prosecuted, at least during the months of the harvest and vintage.^h Lastly, in matters relating to military discipline, no regard was paid to the festal character of the day.ⁱ

No holidays
in military
matters.

Such was the state of the laws with respect to the suspension of judicial proceedings, while the

^e D. 2, 12, 2, *Eadem oratione*.

^f D. 2, 12, 3, § 1.

^g *Ib.* § 2.

^h D. 2, 12, 3, *Solet enim*.

ⁱ *Divus Trajanus*, D. 2, 12, 9.

Alteration in
the law when
the empire
became
Christian.

Days regard-
ed with pec-
uliar veneration
by the
Christians in
the fourth and
fifth centuries.

Weekly festi-
vals.
The Lord's
day.

The Sabbath
day.

empire was still heathen; but the triumph of Christianity naturally drew after it an alteration in the days to which the prohibition attached. The times formerly observed as *dies feriati* by the courts of law were gradually exchanged, with the exception only of the periods of harvest and vintage, for those esteemed more peculiarly sacred by the Christian Church. It may perhaps conduce to the clearness of our view of this change, if, before we enter upon the account of it, we inquire what these days in that age were.

Foremost in the list stands the Lord's day or Sunday; to borrow the language of an early writer, "the day of the resurrection, the queen, the chief of all days, in which our life arose, and the victory over death was gained by Christ:"^k the day also in which, as Justin Martyr urges, God "out of darkness and the primal matter formed a world."^l In the earliest accounts preserved to us of the customs of the Christians, we find this day noted as peculiarly celebrated by them.^m

Next in rank to the Sunday, at least, if the frequency of its observance is considered, stood the Saturday, or, as it is universally called by the early writers, the Sabbath; a day observed with the same religious services in all respects as the Lord's

^k Pseudo Ignatius, near end.

^l Κορμας, Apol. ii. ad fin.

^m Pliny, Ep. 97, lib. x. and Bing. xx. 2, 1,

day,^a though a difference grew up, as will be more fully noted in another place, between the eastern and western churches, upon the question whether it should be kept as a festival or a fast.

To these weekly holidays were added others of only annual recurrence, commemorative either of the principal events in the history of our Saviour, or of the sufferings of his more eminent followers.

Thus, at the commencement of the civil year, we are met by the feast of the Epiphany; a day to which tradition assigned not only the worship of the Magi, but the baptism of Christ; the miracle of turning water into wine, and that of feeding the 5000, both considered to be typical of spiritual blessings;° and which the eastern Christians, until shortly before the age of Chrysostom, when they adopted the custom of the Latin Church in this respect, celebrated also as the anniversary of the birth of Christ.^p The Epiphany was succeeded by the great festival of Easter, and that again by the feast of Pentecost, or the day of the Holy Ghost.^q

But the whole time between these two feasts was looked upon as one continuous festival, known also by the name of the Pentecost, or Quinquagesima.^r Within it, however, two periods must be more particularly distinguished; first, the seven

Annual festivals commemorative of events in the life of Jesus Christ.

The Epiphany.

Kept till A.D. 390, as the day of the Nativity.

Easter.

Pentecost. The fifty days from Easter to Pentecost.

The seven days following Easter.

^a Bing. xx. 3, 2.

^o Augustin, Ser. de Temp. 39, in In. ^p Bing. xx. 4, 2.

^q Bing. xx. 6, ult.

^r Bing. xx. 6, 1, 3.

Alteration in
the law when
the empire
became
Christian.

empire was still heathen ; but the triumph of Christianity naturally drew after it an alteration in the days to which the prohibition attached. The times formerly observed as *dies feriat*i by the courts of law were gradually exchanged, with the exception only of the periods of harvest and vintage, for those esteemed more peculiarly sacred by the Christian Church. It may perhaps conduce to the clearness of our view of this change, if, before we enter upon the account of it, we inquire what these days in that age were.

Days regarded with peculiar veneration by the Christians in the fourth and fifth centuries.

Weekly festivals.
The Lord's day.

Foremost in the list stands the Lord's day or Sunday ; to borrow the language of an early writer, " the day of the resurrection, the queen, the chief of all days, in which our life arose, and the victory over death was gained by Christ :"^k the day also in which, as Justin Martyr urges, God " out of darkness and the primal matter formed a world."^l In the earliest accounts preserved to us of the customs of the Christians, we find this day noted as peculiarly celebrated by them.^m

The Sabbath day.

Next in rank to the Sunday, at least, if the frequency of its observance is considered, stood the Saturday, or, as it is universally called by the early writers, the Sabbath ; a day observed with the same religious services in all respects as the Lord's

^k Pseudo Ignatius, near end.

^l Κοσμον, Apol. ii. ad fin.

^m Pliny, Ep. 97, lib. x. and Bing. xx. 2, 1.

day,ⁿ though a difference grew up, as will be more fully noted in another place, between the eastern and western churches, upon the question whether it should be kept as a festival or a fast.

To these weekly holidays were added others of only annual recurrence, commemorative either of the principal events in the history of our Saviour, or of the sufferings of his more eminent followers.

Thus, at the commencement of the civil year, we are met by the feast of the Epiphany; a day to which tradition assigned not only the worship of the Magi, but the baptism of Christ; the miracle of turning water into wine, and that of feeding the 5000, both considered to be typical of spiritual blessings;^o and which the eastern Christians, until shortly before the age of Chrysostom, when they adopted the custom of the Latin Church in this respect, celebrated also as the anniversary of the birth of Christ.^p The Epiphany was succeeded by the great festival of Easter, and that again by the feast of Pentecost, or the day of the Holy Ghost.^q

But the whole time between these two feasts was looked upon as one continuous festival, known also by the name of the Pentecost, or Quinquagesima.^r Within it, however, two periods must be more particularly distinguished; first, the seven

Annual festivals commemorative of events in the life of Jesus Christ.

The Epiphany.

Kept till A.D. 390, as the day of the Nativity.

Easter.

Pentecost. The fifty days from Easter to Pentecost.

The seven days following Easter.

ⁿ Bing. xx. 3, 2.

^o Augustin, Ser. de Temp. 39, in In. ^p Bing. xx. 4, 2.

^q Bing. xx. 6, ult.

^r Bing. xx. 6, 1, 3.

days immediately following Easter, during which the multitude, who had been baptized on Easter eve (the great period of baptism), continued to wear the white robes used on that occasion, as emblematic of purity and light; whence the Sunday following Easter day was called *Dominica in Albis*:^s secondly, Ascension day.^t

The seven
days follow-
ing Pentecost.

The feast of Pentecost was the second principal time for baptism, the third being the Epiphany; and the festival was continued during the seven following days, the time when, as at Easter, the newly baptized kept on their white dresses; a custom supposed to have given rise to our English name of Whit (i. e. White) Sunday.^u The close of the year brought round in the Western, and from the age of Chrysostom also in the Eastern Church, the celebration of the birth of Christ; to use the words of the father whom we have just named, that "most venerable, most astonishing of festivals, the fountain whence the other great festivals flowed, for had Christ not been born he would not have been baptized, which is the Epiphany; he would not have been crucified, which is the Passover; he would not have sent down the Spirit, which is Pentecost. But not only on that account," he continues, "is this festival worthy of pre-eminence, but because what happened upon it is more astonishing than what happened on the others: for that Christ

Christmas.

^s Bing. xx. 5, 9, 12. ^t Bing. xx. 6, 5. ^u Bing. xx. 6, ult.

should die was a natural consequence of his having been born a man; for though he did no sin, yet he had assumed a mortal body; but that being God, he should be willing to become man and endure to humble himself to a degree which thought cannot follow, is most awful, most full of amazement."^x Thus was the commemoration of the principal events of the life of the Saviour interwoven in the Christian year. Nor was the recollection of his more eminent disciples suffered to fall into oblivion.

Throughout the year were to be found festivals in honour of the birth days,^y for so the early Christians called the periods of the deaths of the apostles and martyrs; the former celebrated with universal, the latter with a more local regard.^z Though even thus the whole number celebrated was so considerable, that in some churches a festival would occur once or twice a week.^a Among the more universal festivals must be enumerated also that for the Innocents, who were looked upon as the earliest martyrs; one for the Maccabees, and one for all the martyrs, kept shortly after Whitsunday.^b While to those of local celebration should be added

Festivals of
apostles and
martyrs.

Festival on

^x Hom. in Phlogonium, 75, Vol. 5, 508.

^y Natalitia Tertul. d. Cor. Mil. 3, 4; Council. Laod. c. 51; Ambrose, Serm. 20.

^z Bing. xx. 7, 6, 11. Two churches in Syria, only twenty miles apart, had distinct festival days in honour of different martyrs.—Sozomen, v. 3.

^a Bing. xx. 7, 14.

^b Bing. xx. 7, 11, 12, 13.

the day when
a bishop suc-
ceeded to his
see.

In commemo-
ration of joy-
ful events.

one on the day when the bishop of any church succeeded to his see:^c and festivals observed in particular places in commemoration of occasions of peculiar joy; as at Alexandria, on the 21st of July, in memory of the cessation of great earthquakes; at Constantinople, on the 24th September, to commemorate the victory of Constantine over Licinius, and the civil triumph of Christianity consequent thereon.^d

Fasts observ-
ed by the
early Chris-
tians.

But the festivals of the Church were not the only days observed by the Christians of that age with more than ordinary devotion. To the feasts must be added the fasts prescribed by the Church, if we would attain a complete view of the periods thus in some sort consecrated. The most considerable of the seasons of fasting was Lent, the forty days preceding the great festival of Easter; when,—either more vividly to realize the grief of the apostles at the death of Christ; or that by this exercise of abstinence men might be recalled from secular cares to holy works, and by proper spiritual exercises all might be made fit to partake of the Communion at Easter, which even the least devout considered at that time a duty; or, in imitation of our Lord himself,—fasting with more or less of rigour was generally practised. However, no slight latitude of observance seems to have been allowed with regard to the

Variety in the
observance of
it.

length of this fast. That it was not originally or uni-

^c Bing. xx. 8, 2.

^d Bing. xx. 8, 3.

versally a fast of forty days appears clear,* though everywhere it bore a name derived from the number forty.^f At Rome, says an ecclesiastical historian of the sixth century, they fast three weeks before the Passover, excepting the Saturdays and Sundays. In Illyria, throughout the whole of Greece, and at Alexandria, the fast commences six weeks before that period. In other parts, though they commence their fast seven weeks before Easter, they fast but fifteen days, at intervals.^f This testimony is confirmed, as to the East, by a contemporary writer, who, however, says nothing about Rome.^g

But whatever differences there were in that age, in the observance of the earlier part of this fast, none seem to have existed in respect to the concluding week, the Great Week as it was called: but all kept this as a season of rigorous abstinence

The Great or
Passion
Week how
regarded.

* Bing. xxi. 1—15.

^f Quadragesima, Soc. v. 21. A name, however, which some learned men suppose to have had reference originally to hours, and not to days. The antiquity and universality of the observance of a forty hours' fast before Easter day, seems to be admitted by all students of ecclesiastical institutions.—Bing. xx. 2, 2. How general the observance of a period of forty days had become in the fourth century, may be inferred from the law cited in page 18 ^b. The present commencement of Lent with Ash Wednesday, does not seem to have been practised, at least till the time of Gregory the First, if then. These days were added, that, with the deduction of Sundays, a complete forty days of fasting might be observed.—Bing. xxi. 5, 6.

Seems to
have been
originally of
forty hours.

The com-
mencing with
Ash Wednes-
day not used
till A.D. 690.

^g Sozom. vii. 19.

from whatever could delight the body, that the soul might more readily accompany the Saviour in his sufferings, and realize "the great, the unspeakable blessings procured in it for man." For in this week, to sum up the teaching of the Church in the eloquent language of Chrysostom, "the long war was brought to a close, death was quenched, the curse removed, the tyrannous empire of the devil overthrown, his goods plundered, God and man reconciled; heaven became accessible, men and angels were joined together; what had been dis-severed, was united; the partition wall broken down, the barrier taken away; the God of peace made peace between the things above and the things on earth."^h

Extent of
fasting in it.

In this week then, not only were the fasts prolonged till the evening, as was the case in those ages in all the stricter fasts,ⁱ but the only food taken was bread, salt and water;^k while the more zealous would continue their fast through two, three and four days successively, and some, it is

Superpositary
fasts.

said, through the whole week. These fasts were called superpositary, that is, one on the back of

Services of

the other.^l The services of the Church followed

^h Hom. in Gen. 30.

ⁱ Bing. xxi. 1, 16.

^k Whence these fasts were called ξηροφαγοι, because they eat only dry food.

^l ὑπερθεσίσματα, Bing. xxi. 1, 26.

throughout the course of this week the actions or sufferings of the Saviour. Thus, on the Holy Thursday,^m the sacrament was received in the evening after supper, because that was the time of its original institution.ⁿ Good Friday, as the day on which the Lord gave himself up for us, was the appointed time for the absolution of those who had been subjected to penance for their sins.^o The fast of Friday was prolonged, by all who were able to bear it, over the succeeding Saturday, while Christ continued in the tomb, till cock-crow on the Easter morning: and during the whole of that night the people continued assembled in the churches, in the expectation,—an expectation apparently derived from the Jews,—that on that night the Messiah would appear to receive his kingdom;^p of which event, as is well known, the Christians, from the earliest times, confidently expected the speedy happening.

the Church
during this
week.

Fast on Good
Friday and
Easter Eve.

Expectation
of the coming
of Christ on
Easter Eve.

Thus was the period preceding Easter kept in Fasts of the

^m Called also Dies Mandati, i. e. the command of Christ to his disciples when he washed their feet, to follow his example; whence comes Maundy Thursday.

ⁿ Bing. xxi. 1, 30.

^o Ambrose, ep. 33, Ad sororem, near the end.

^p "Traditio Judæorum est Christum mediâ nocte venturum in similitudinem Ægyptici temporis, quando pascha celebratum est et Dominus super tabernacula transiit, et sanguine agni postes nostrarum frontium consecrati sunt: unde reor et traditionem apostolicam permansisse, &c."—Jerom. on Math. xxv. 6. See Lactantius, vii. 19; Bing. xxi. 1, 32.

four seasons
or the Ember
weeks.

the fourth century. But besides this great spring fast, three shorter periods of fasting were observed in the other three seasons of the year: i. e. in June, September and December. In later times these were known as the Fasts of the Four Seasons; the spring also having its time for fasting in March, though, as this generally coincided with the beginning of Lent, it became less conspicuous.^q These times, known at the present day as the Ember days,^r were kept as full fasts, i. e. fasts in which nothing was eaten till the evening,^s and were thus distinguished from the weekly or stationary fasts, on Wednesdays and Fridays, when the fasting ceased at three in the afternoon; and which were therefore called half fasts.^t

The stationary
fasts on Wed-
nesday and
Friday.

Vigils.

To conclude this sketch of the times of peculiar religious observance in the Christian world, it should be noted that the feasts of the apostles and martyrs were preceded by vigils through the night, kept in

^q Bing. xxi. 2, 1. The name Lent, originally Lenct, means Spring. Hampson, Med. Ævi Calend. ii. and Encyc. Metrop. on the word.

^r From the ashes which it was the custom for persons to strew on their heads.—Hamp. ii. 112.

^s It is supposed by some persons, that these fasts were instituted in opposition to the Roman festivals of the Vinalia, for the vintage; the Rubigalia, in honour of the god Rubigus, for fruits; and the Floralia, for flowers. See Hamp. ii. 113. The times of celebration however do not correspond: the Rubigalia were kept on the 25th April, the Floralia early in May.

^t Semijunia, Bing. xxi. 3, 3.

the churches, or, as it would appear in the earlier times, around the tomb of the saint.^u

Amongst this long array of sacred seasons, legislative enactment naturally selected, for its first objects, those regarded by the Christians with the greatest reverence. Accordingly we find Constantine the Great providing that the Lord's day, which, probably in deference to the feelings of the still numerous adherents to the old religion,^x he calls "the day of the Sun so famed for the reverence due to it," should not be occupied by the "disputes of the forum, and the injurious contentions of suitors;" though the more grateful acts of conferring liberty and legal rights were still allowed to be performed in the courts.^y This law was followed at some interval, by one prohibiting the exacting on that day from any Christian, the payment of any public or private debt.^z And both enactments are repeated in the succeeding reign with the additional prohibition of trials before arbitrators, even though deriving their authority from the assent of the parties;

Laws of Constantine as to Sunday, A.D. 321.

Further law as to Sunday, A.D. 368, by Valentinian and Valens.

These laws re-enacted.

^u Bing. xx. 7, 10.

^x To please whom he decreed, by a law of the same date, the regular consultation of the auspices.—C. Theod. xvi. 10, 1; Gibbon, c. 20, in note.

^y Emancipandi et manumittendi; emancipatio was the setting the son free from the paternal power; manumissio, the giving freedom to a slave.—C. Theod. ii. 8; cf. 3 C. 12, 4, Omnes iudices.

^z C. Theod. viii. 8, 1, Die solis.

and the declaration that this violation of the sacred rites of religion should be considered "not only infamous, but sacrilegious."^a

Prohibition of criminal punishments in Lent, A.D. 370—377, Valentinian, Valens and Gratian.

The progress of Christian ideas is marked by the phraseology of this law. It begins "on the day of the Sun, which our fathers rightly called the Lord's Day." The same circumstance is attested by a law of somewhat earlier date prohibiting all criminal

Law, A.D. 386, by Valentinian, Theodosius and Arcadius, as to holidays generally.

proceedings in Lent.^b A few years later bring us to an edict of the great Theodosius, re-arranging the whole system of judicial holidays, in conformity to the feelings now prevalent among his subjects. All days, it enacts, are to be open for civil business,^c except the two months of holidays at the time of the harvest and the vintage; the accustomed vacations at the calends of January; the days on which the foundation of Rome and Constantinople were celebrated; "for these the law ought to respect, since from them it took its rise;"^d the seven holy days preceding and following Easter; the days of the sun as they successively recurred;^e and the

^a C. Theod. xi. 7, 13, Solis die.

^b Quadraginta diebus, qui auspicio (i. e. ab initio) ceremonialium Paschale tempus anticipant, omnis cognitio inhibeatur criminalium questionum.—3 C. 12, 6.

^c Omnes dies jubemus esse juridicos. To extend this to criminal cases would be inconsistent with the former law.

^d Natalitios dies maximarum urbium, quibus debent jura deferre, quia et ab ipsis nata sunt.

^e Dies solis, qui repetito in sese calculo revolvuntur.

days of the birth and accession of the emperors ;^f making altogether 124^g—a number nearly the same as we have seen to have been that of the judicial holidays under the former system. It is to be remarked that no holiday is ordered to be kept for Christmas ; but the ancient holidays on the calends of January still retain their place at the opening of the year ; a place which they continued to retain under the imperial legislation, notwithstanding the opposition of many of the clergy to their observance.^h

The law just cited was speedily followed by another, enjoining the more strict observance of the seven days before and after Easter. During those days, it decrees, no act shall be done in a court of law, except for the purpose of conferring liberty or legal rights ;ⁱ a provision, however, which is said

Law, A.D. 392,
by the same
emperors as
to the period
of Easter ;

^f *Parem necesse est habere reverentiam nostris etiam diebus, qui vel lucis auspicio vel ortus imperii protulerunt.*—C. Theod. ii. 8, 2.

^g I. e. 60 days for the harvest and vintage ; 15 days at Easter ; 40 Sundays, exclusive of those included in these periods ; 3 days at the calends of January ; 2 days for the foundation of Rome and Constantinople ; and 4 for the birth and accession of the emperors.

^h 3 C. 12, 7, *Omnes dies* ; and Bing. xvi. 4, 17 ; xx. 1, 3. The Council of Trullo made a canon against their observance, Can. 62 ; but this was some time after the age of Justinian.—A.D. 602. Labb. xi. 971. In the west in some parts a fast appears to have been kept on those three days, to “trample down the custom of the Gentiles.” See Council of Tours, II. Can. 17 ; Labb. ix. 790.

ⁱ *Actus omnes*, 3 C. 12, 8.

and as to the
Sundays.

A.D. 460, by
Leo and
Anthemius.

by the commentators on the law not to have rendered invalid other acts of what was called voluntary jurisdiction, such as the appointment of a guardian or the adoption of a party. But the cessation of judicial proceedings was yet more fully and energetically enjoined upon the Lord's days, than even upon the fifteen days at Easter. One prohibition, that against proceedings before arbitrators, appears to have been confined to these days:^k and a law of the fifth century enforces their observance as legal holidays, with peculiar emphasis. "The Lord's day," thus it runs, "we decree to be ever so honoured and revered, that it should be exempt from all compulsory process: let no summons urge any man; let no one be required to give security for the payment of a fund held by him in trust; let the serjeants of the courts be silent; let the pleader cease his labours; let that day be a stranger to trials; be the crier's harsh voice unheard;^l let the litigants have breathing time, and an interval of truce; let the rival disputants have an opportunity of meeting without fear; of comparing the arrangements made in their names and arranging the terms of a compromise.

^k 3 C. 12, 7, after forbidding judicial proceedings on the festivals mentioned above, proceeds: *In eandem observationem numeramus et dies solis, quos dominicos rectè dixere majores: in quibus parem necesse est habere reverentiam, ut nec apud ipsos arbitros, &c.*

^l Announcing that the goods of a debtor were about to be put up to auction.

If any officer of the courts, under the pretence of *Impar lance*. public or private business, dares to despise these enactments, let his patrimony be forfeited."^m

It would appear, however, that the exemptions, which, as we have seen, were admitted under the ancient Roman law to the general cessation from legal business on the more ancient festival days, were still regarded as applicable to the days observed as festivals in the Christian empire. The laws enumerating those exemptions are found in the *Pandects*, and were therefore considered as unrepealed in the time of Justinian. The *Decretals* long afterwards recognize "urgent necessity and piety," as grounds for exempting causes which could be brought under either of these classes, from their general prohibition of judicial proceedings upon holidays:ⁿ and, according to the exposition of the commentators, this exemption included the same cases as are enumerated in the passages before cited from the *Pandects*.^o While, by their declarations that on certain

How far exemptions admitted by the civil law.

How far by the *Decretals*.

Provisions as

^m *Vicaria pacta conferant transactiones loquantur.*—3 C. 12, 2, *Dies festos*.

ⁿ X. ii. 9, 1, *Omnes dies*, and 5, *Conquestus*.

^o Under necessity, they enumerate the cases where the right of action, or the object about which it was brought, was in danger of being lost by time, or where irreparable damage might arise from delay; under piety, the causes of very poor or sickly persons; and sum up the grounds of exemption in these lines:

Hæc faciunt causas festis tractare diebus,

Pax, scelus admissum, manumissio, res peritura,

Terminus expirans, mora testis abesse volentis,

Cumque potestatis patriæ jus filius exit.

to decrees by
consent pub-
lished A.D.
1230, Gre-
gory IX.

festivals enumerated by them, even the consent of the parties should not make the proceedings valid, or allow judgment to be given, they seem to imply that before that time the consent of the parties had the effect, which belonged to it, as already stated, by the ancient law; and which was still saved to it by the Decretal in the holidays at the times of harvest and vintage.^p

Further ex-
emptions by
Christian
emperors.

A.D. 408, by
Honorius and
Theodosius II.
as to pirates.

A.D. 414, by
Honorius and
Theodosius II.
as to trans-
port of grain.

The conferring freedom or legal rights are cases expressly excepted, as we have seen, both on Sundays and on the fifteen days at Easter. The commentators on the law of Leo, quoted above, say that it was not allowed to prevent the exaction of a security for his debt, from a debtor whose flight was apprehended. And, in two instances, express provision was made by the Christian emperors against the cessation of judicial proceedings during Lent, or even on "the venerable day of Easter."

These cases are, 1st, the examination by torture of robbers, especially those at that time most dreaded—the Isaurians—lest the discovery of their criminal designs should be postponed; "for the pardon of the Most High," it is observed, "may be well hoped for in such proceeding, as tending to the safety and welfare of many:"^q and, 2ndly, the examination of the master of a vessel employed in

^p X. ii. 9, 5, Conquestus. See case of Abbot of St. Albans, Spel. de O. T. 14.

^q 3 C. 12, 9.

the transport of corn, who should allege that more than one hundredth part of the cargo had been damaged and thrown overboard. Special officers were appointed to inquire into these cases, and they were ordered to proceed within five days after the arrival of the vessel, even on festival days, and without attention to the religious services.^r

To the holidays enumerated in the law of Theodosius cited above, Justinian, in re-enacting it, added Christmas Day, the Epiphany, and the festivals in commemoration of the Apostles;^s but no other days were ordered to be observed as judicial holidays in the eastern empire in the time of that emperor, though the courts seem not to have sat during the stationary fasts kept upon Fridays.^t With the subsequent regulations of that empire we need not trouble ourselves. The separation between the east and west became, after the age of Justinian, too complete to allow of any direct influence being exercised by the legislation of the east upon the practices of the west; and we must therefore confine our attention to the latter.

After the laws already cited, the first enactment which claims our attention, when the kingdoms

Holidays appointed by Justinian on Christmas day, the Epiphany, Apostles' feasts.

Courts seem not to have sat on Friday then, A. D. 527 to A. D. 565.

Canon of council of Tarragona as to Sunday.

^r Etiam diebus feriatis et devotionum absque ulla observatione.—C. Theod. xiii. 5, 38.

^s 3 C. 12, 2, Omnes dies.

^t Sozomen, Bing. xx. 2, 3. Cf. Law of Henry the First of England, *infra*.

formed upon the ruins of the Roman Empire began to consolidate themselves, may a little surprise us.

A.D. 516. "Let not any bishop," so runs the law, "or any of the inferior clergy, hear causes on the Lord's day, but let them be occupied in the performance of the

A.D. 585.
Canon of the
second council of Macon
as to Sunday,
confirmed by
an ordinance
of Guntram.

solemnities ordained in honour of God."^u Towards the close of the same century we find in the canons of the second council of Macon, and the ordinance of Guntram king of the Franks, addressed to the bishops and judges at the conclusion of the council, a more general regulation for the cessation of judicial business on Sundays: "Keep the Lord's day," it says, "whereon we were born anew, and freed from all sins. Let none of you spend his leisure in litigation: let none continue the pleading of any cause. Does any one disregard or despise this wholesome exhortation, let him know that he will in the first place be punished by God according to his deserts, and next that he will draw upon himself the unceasing anger of the clergy."^x If he be a lawyer, let him lose the privilege of pleading the cause; if a clerk, or a monk, let him be shut out for six months from the society of his brethren."^y

^u Con. Tarragonense, C. 4; C. 15, q. 4. See note at the end of the chapter.

^x Sacerdotalique iræ implacabiliter subjaci.—Con. Matisiense, II. Can. 2; Labbeo, ix. 947.

^y Guntram's ordinance directs, that, on the Lord's day, on which we revere the sacred mystery of the resurrection, let, above all things, no legal contest be carried on; præcipue nulla causarum jurgia moveantur.—Labbeo, ix. 947.

A long period elapses before any further regulations upon this subject meet us; but then they appear in a more extended form. The capitularies of Theodulphus, bishop of Orleans, towards the close of the eighth century, are not content with directing that, on the Lord's day, "while men come to the churches no cause shall be pleaded or heard, no dispute go on."^a They include Lent also as a season "wherein should be no suits, no contentions, but all should persevere in the praises of God and in necessary works."^a The council of Rheims, in the beginning of the next century, does indeed limit itself to a repetition of the prohibition of pleadings on the Lord's day.^b But forty years later we find a council held at Soissons, in the monastery of St. Medard,^c extending the same injunction to a number of days exceeding those appointed by the emperors of Rome as judicial holidays. "From Septuagesima till eight days after Easter, from the coming of the Lord until eight days after Epiphany, in the Fasts of the Four Seasons, on the day of the Greater Litanies,^d and on Rogation days, no causes," it ordered, "should

Capitularies
of Theodul-
phus, A.D. 797,
as to Sundays
and Lent.

Council of
Rheims, A.D.
813, Charle-
magne, as to
Sunday;

and of St.
Medard, A.D.
853, Charles
the Bold,
various fasts
and feasts.

^a C. 24; Labbeo, xiii. 994.

^a Ib. 42, p. 1005. The bishop cites Isaiah, lviii. 3, 4; the word which we translate "labours" being, in the Vulgate, "debtors."

^b Can. 25; Labbeo, xiv. 78.

^c A bishop of Tourraine in the sixth century.

^d In litanis majoribus.

be tried, no pleas holden.”^e The days lastly enumerated require some further notice, on this their first appearance.

Institution of
the greater
Litanies,

in A.D. 590,

The day of the Greater Litanies was the 25th of April, St. Mark’s day; and it took its name, according to the account given to us by the venerable Bede, from the following circumstance:—“ In the time of the Emperor Maurice, when St. Gregory was archdeacon of Rome and Pelagius pope, there were such heavy rains that all the rivers overflowed their banks, and the Tiber came over the walls of Rome. The water bore whatsoever of snakes and scorpions there were in the woods; and a large serpent, like a beam of wood, came up the Tiber and was seen by all the Romans. After the waters began to subside, the heat of the sun caused a great stench to arise from the carcasses of the reptiles, and whoever inhaled that stench immediately died.” Of this plague, which is ascribed to the sin of the Romans in plunging into banquetings and luxurious living, as a finale to Lent and the communion of Easter,^f the pope was one of the first who died; by Gregory I. when the people chose Gregory pope, and sent to Constantinople for a confirmation of the election. In

^e Nisi de concordia et pacificatione nullus supra sacra evangelia jurare presumat.—Con. ap. St. Medardum. Act. 7, c. 8; Labbeo, xiv. 995, xvii. App. 37; C. 22, q. 5, 17.

^f Durandus, vi. c. 102, De Rogationibus.

the mean time the mortality increased ; till Gregory instituted seven litanies, (i. e. processions with singing and prayer, from the seven principal churches^g to St. Peter's) : the first of the clergy, the second of the abbots and monks, the third of the nuns, the fourth of the widows, the fifth of the married men, the sixth of the boys, and the seventh of the women. Seventy persons fell dead on that occasion in St. Peter's church ; but then the mortality ceased : that day all the people fasted on bread and water, and Gregory ordained that all the church should keep this day as a fast.^h The day was known by various

Various names by which this day known.

names. It was called *Cruces Nigræ*, because the crosses borne in it were veiled in black as a sign of mourning : *Litania Major*, because instituted by a pope, and not, as the *Litaniæ Minores* after mentioned, by a simple bishop : and *Processio Septiformis*, *Romana*, and *Gregoriana*, from the number of processions, the place where, and the person by whom, they were instituted. The day was distinguished, it is said, by another event, scarcely less remarkable than the cessation of the plague. Gregory had ordered that the image of the Virgin Mary, preserved in the church of *Araceli*, should be borne in the procession ; as it moved along, the

Appearance of Archangel Michael upon it, and chant by invisible beings round the image of the Virgin.

^g Durandus, vi. c. 102, De Rogationibus ; Hosp. d. T. 357.

^h Bede, Serm. Varii, Op. vii. 501 ; Durand, u. s.

pestilence yielded before it, and voices were heard in the air around chanting—

Regina cœli, lætare;

Alleluia.

Quia quem meruisti portare;

Alleluia.

Resurrexit sicut dixit;

Alleluia.

Immediately Gregory joined in with

Ora pro nobis Deum;

Alleluia.ⁱ

And directly afterwards, as David over the threshing-floor of Araunah the Jebusite, so Gregory beheld on the castle of Crescentius (which thence took its modern name of St. Angelo) the angel of the Lord standing with a sheathed sword in his hand.^k In commemoration of this, and an earlier appearance of the Archangel Michael,^l whom it was believed to have been, Gregory instituted a festival kept on the 8th of May.^m

Institution of
Feast of St.
Michael on
8th of May.

Institution of
Rogation
days,

Rogation days, or, as they were called by way of

ⁱ Rejoice, Queen of Heaven; Hallelujah. For he whom thou didst deserve to bear; Hallelujah. Arose as he said; Hallelujah. Pray to God for us; Hallelujah.

^k Durand. vi. c. 89, De vii. diebus post Pascha. The ancient Roman rituals, in the litanies composed by Gregory, mention the image of the Virgin being borne in the procession, and the appearance of the angel, but are silent as to the angelic voices.—Hosp. d. T. 357.

^l Mentioned below.

^m Hosp. d. Fest. 84 b; Hamp. ii. 141.

distinction from the *Litaniæ Majores*, the Minor Litanies, were the three days preceding Ascension day, which were ordained to be kept as fasts by Mamercus, the bishop of Vienne, on the occasion of a great mortality and other fearful events in that place; the church in which he was performing baptism on Easter eve, and half the town, being burnt by lightning, and many people destroyed by wolves and lions.ⁿ The "minority" of these litanies consisted, as has been intimated, in their institution by a simple bishop.

The periods marked out by the canon of the council of St. Medard, for cessation from legal business, do not appear to have been universally adopted in their full extent. The directions given by Pope Nicholas the First to the Bulgarians, on their conversion to Christianity, as to the seasons when judicial business and executions ought to be suspended, embrace only the Lord's day; the feasts of the Virgin, of the twelve Apostles and Evangelists, and the Saints, whose "birthdays," under the favour of God, were specially celebrated among them; and the season of Lent; and assign as the reasons for thus abstaining from doing "what might perhaps be done without sin"—that man ought on these days to "cleave more closely to the things of God, and entirely cut away what belongs

by Mamercus,
A.D. 474.

Holidays
fixed by
Nicholas I.
A.D. 858 to
867;

ⁿ Bede Ser. Varii, vii. 501. See Moreri, D. H. xii. 148.

to the world,"—that "when preparing for this sacred warfare the Christian should not be involved in secular affairs,"—and that "from reverence for these solemn seasons, nothing should be publicly seen but what will conduce to the universal joy, and peace, and spiritual gladness."^o So the council of Tribury contented itself with fixing Sundays, the feasts dedicated to the Saints, Lent, and the other times of fasting, as seasons when no pleas should be held.^p The council of Erphurt, in Saxony, added to these times, with the consent of the "most glorious King" Henry the First, and for the increase of "the Christian religion," seven days before Christmas, eight days after Easter, and seven days before the Nativity of St. John the Baptist, i. e. the 24th of June: and reckoned the Lent vacation from Quinquagesima instead of Quadragesima Sunday,^q that "more time might be allowed for prayer and going to the churches." And though the canon of the council of St. Medard forms part of the body of canon law collected by Gratian, and recognized by the popes, the courts at Rome did not keep holiday before the beginning of Lent.^r

by council of
Tribury, A. D.
895, under
the Emperor
Arnulph.

An addition
made under
Henry I.
emperor,
A. D. 932.

Holidays
fixed by the
council of
Erphurt.

Practice of
Roman
courts.

^o Labbeo, xv. 407, 418, cap. 12, 45.

^p Nullus comes, nullusque omnino secularis—on those days—placitum habere, sed nec populum præsumat cohercere.—Con. Triburiense, c. 15; Labbeo, xviii. 150.

^q Con. Erfurtiense, c. 2; Labb. xviii. 363.

^r Gloss on 15, 4, 2, Placita. The gloss leaves it doubtful whether they sat after Quinquagesima Sunday.

NOTE TO PAGE 30.

ON THE JURISDICTION EXERCISED BY THE BISHOPS
IN TRYING CAUSES.

THE canon cited in page 24^a goes on: "On other days, if the parties come to them, they may decide what is just, except in criminal matters." A short notice of the authority exercised by the bishops as judges may not be out of place here. It seems to have arisen out of the unwillingness of the Christians, before the empire became Christian, to bring their disputes before the tribunals of their unbelieving neighbours; and the practice of referring such matters to the decision of their spiritual heads was confirmed, even after the empire had become Christian, by the general language in which St. Paul, in the 1st Epistle to the Corinthians, vi. 7, condemns the resort to legal tribunals. "We dare not say who made me a judge or a ruler among you," says St. Augustine, while complaining of the degree to which his time was taken up by such applications, "for the apostle appointed the ecclesiastics judges, when he forbad Christians to contend with each other in the courts of law."—*Ad. Ps.* 119; *Con.* 24; *cf. De Op. Monastico*, c. 29. The resort to this jurisdiction was encouraged by the emperors. Constantine the Great, according to the testimony both of Eusebius and Sozomen, *Vit. Cons.* iv. 27, and *Ecc. Hist.* 1, 9, prohibited the secular courts from reversing decisions of the bishops, giving an appeal only to the emperor. There is a law in the *Code of Justinian*, 1, 4, 7, *Siquis*, attributed to the emperors Arcadius and

Origin of judicial power exercised by the bishops.

Encouraged by the emperors. By Constantine the Great;

by Arcadius and Honorius in a law of A.D. 398;

and a law
made A. D.
408, by Arca-
dius, Hono-
rius and
Theodosius.

Jurisdiction
in case of
complaints
against clergy
in time of
Justinian.

By the canon
law as laid
down, A. D.
1199, by Inno-
cent III.
and Alex-
ander III.
A. D. 1169—
1181.
Authority
given to the
bishops as
judges by
Charlemagne.

Honorius, by which the jurisdiction is distinctly recognized in civil matters; with the consent of the parties. But there appears some doubt as to the genuineness of this law, in its application to the Christians. In the *C. Theod.* ii. 1, 10, a law in the same words, and of the same date, is found, but relating to the Jews, and to trials before their patriarch. However, there appears to be no question of the genuineness of a law of somewhat later date, by which the decisions of the bishops are classed among those wherefrom there lay no appeal, but only a petition to the emperor, *C.* 1, 48; and the judges are ordered to see that they are carried into effect. It will be observed that the jurisdiction existed only when *both* sides voluntarily accepted it; and that it did not extend to criminal matters. In the case of complaints against the clergy, however, the bishop was judge in the first instance: but from his sentence, according to the enactments of Justinian, an appeal lay to the judge of the place, whose decision, if it affirmed that of the bishop, was final, but if not, an appeal lay from it to the higher courts.—*Nov.* 123, c. 21. The canon law of later times gave the appeal in these cases to the metropolitan, *X.* 1, 31, 9, *Duo simul*; or to the papal see and its legates, *X.* 1, 30, 1, *Quum non ignoretis*.

Nor was this claim to increased jurisdiction a simple usurpation on the part of the clergy, in opposition to the wishes of the laity; Charlemagne, at an earlier period, following a supposed law of Theodosius the Great,^a had given to the bishops a judicial authority in civil matters, not inferior to that claimed by Alexander and Innocent. Throughout the whole extent of his vast empire, (the law is addressed to all who by the help of God are subject to my dominion, Romans and Franks, Germans, Bavarians,

^a *C. Theod.* xvi. 11. See Gothofred's notes.

Burgundians, Saxons, Thuringians, Frisons, Gauls, Bretons, Lombards, Gascons, Beneventines, Goths, Spaniards, and all others our subjects),—this true son of the Church enjoined, that whoever was involved in a lawsuit, whether as plaintiff or defendant, and in whatever state the cause might be, even when judgment was on the point of being delivered, might, “if he preferred to have the decision of the minister of the divine law, and although the other party should not consent,” carry the whole matter before the bishops, whose sentence should be conclusive. “For much which in legal tribunals the fetter of captious prescription does not allow to be adduced, the sacred authority of religion brings to light and investigates.”—*Cap.* ii. 366; *Labbeo*, xv.; *App.* 658; *cf.* *C.* 11, 9, 1, § 35, 36, 37; *X.* ii. 1, 13.

It appears to have been considered, at least in the earlier times, the duty of the clergy to render their services as judges gratuitously. Socrates tells us a story of Sydonius, Bishop of Tyre, that when he perceived that his clergy made a profit of the legal controversies brought before them, he would not allow them to act as judges, but referred the petitions of those who came for redress to a layman, whom he knew to be a just and upright man, and thus delivered the litigants from strife and controversy.—*Ecc. Hist.* vii. 37. The extent to which recourse was had to the judgment of any bishop, eminent for his ability and piety, may be estimated from the complaints on this subject, to be found in the writings of St. Augustine. In his 24th Sermon, on the 119th Psalm, he tells us of these suitors: “They press on us; they urge, they intreat, they make a tumult; they extort from us to busy ourselves with those things which they love, rather than with investigating the commands of God to our own delight. Certainly those who contend obsti-

The judgments gratuitous.

The date of this bishop's life is not given, but it falls earlier than A.D. 443.

Extent to which recourse had to the judgment of the bishops.

nately with each other, and when they oppress good men, despise our sentence, and make us lose the time for inquiring into divine things; certainly they justify us in crying out in these words of the body of Christ"—the 115th verse of the Psalm on which he was commenting,—“Depart from me, ye wicked.” In a similar strain he writes in his work *De Op. Monastico*, c. 29, “Much would I prefer, day by day at certain hours, as is ordered in well-regulated monasteries, to do some manual task, and have the other hours free for reading and prayer, or doing something connected with divine literature, than to endure the tumultuous perplexities of causes strange to me; while either by our sentence we decide, or by our intervention bring to a close, business of a secular nature. But with these troubles the same Apostle burdened us, not indeed of his own will, but his by whom he spoke:” i. e. St. Paul in the Epistle to the Corinthians. So in his letter to Procleianus, No. 147 of the letters, we find him saying, “about gold, silver, lands, cattle, daily are we addressed with bowed head, that we may bring men’s quarrels to a close;” and a letter preserved from one of his friends, Nebridianus, inviting him into the country, begins, “Have you still the courage, my Augustine, to bear the business of your fellow citizens? Is the vacation for which you sigh still not given you?” Thus eagerly did the citizens of Hippo press upon their reluctant bishop the settling of their temporal disputes.

CHAPTER II.

ENGLISH LAWS AS TO LEGAL PROCEEDINGS IN
HOLY SEASONS.

Treaty between Edward the Elder and Guthurn—Canons—under Edgar—of the Council of Enham—Laws—of Canute—of Edward the Confessor—Festivals—of the Virgin Mary—of St. Michael and All Angels—of St. John the Baptist—Local—of All Saints—Wakes—Laws—of Henry I.—of Henry II.—Terms—Judicial System of Normans—Jurisdiction of Sheriff—of the Justices in Eyre—Dispensations—Inquests—Time of holding Assizes—Laws of Edward I.—of Edward III.—Trial at Assizes of other matters—Civil and Criminal—Justices of the Peace—Alteration of Trinity Term—of Michaelmas Term—Modern Terms—Saints' Days in Term—Grand Days—Double Festivals—St. George's Day—Laws of Charles II.—of William IV.—of Victoria—Of the different kinds of Assizes.

WE have now reached the point where England begins to add her tribute of enactments to the stream of legislation, whose course we have so long followed. And from henceforth our attention will be confined to our home-made law.

At a date somewhat earlier than that at which we have arrived, we meet with the first English law appointing judicial holidays.^a It forms one of

^a However, among the canons received in the Saxon era, though of uncertain date, is one which, as it is a repetition of the capitulary of Theodulphus, cited above (see page 25), may probably be of an earlier date than the tenth century.—Spel. Con. i. 545.

Period during which legal proceedings forbidden by the treaty between Edward the Elder and Guthurn, A. D. 905,

the articles of a treaty between Edward the Elder, and Guthurn, king of the Danes, and is somewhat vague in its terms. "Let there be no trials, neither let any one be sworn, on feast days, or the appointed fasts." The observation of the law is enforced by a fine, of which the amount is left undetermined.^b

and provision made against the execution of criminals on Sundays.

Laws of Athelstan, A.D. 928, suspend legal business on Sundays;

and canons in reign of Edgar, circa A.D. 967, on feasts and fasts.

A.D. 1009, under Ethelred, the council of Enham enumerates the periods of vacation,

The same treaty provides that no one should, if it could be avoided, be executed on a Sunday, of whatever crime he might have been guilty.^c After this era there is no lack of legislation upon the subject of our researches. A few years later we find, in the laws of Athelstan, an injunction against transacting legal business on the Lord's day, under the penalty of "the loss of the subject-matter in litigation, and a fine for contempt of the royal authority."^d Among the canons made in the reign of Edgar is one extending this prohibition generally to "feast days and fasts."^e And, fifty years afterwards, a general council held at Enham, in Hampshire, fixed as the periods for legal vacation, all solemn festivals; "the fasts of the four seasons; and the time from Advent till eight days after Epiphany; and from Septuagesima to the fifteenth

^b *Dacorum si quis contra fecerit, legis violatæ poenas dato, Anglus multat plectitor.*—Spel. Con. i. 391.

^c *Ibid.*

^d *Perdat ipsum capitale (i. e. property, chattel), et emendat overhernessam meam.*—Spel. Con. i. 404.

^e *Spel. Con. i. 450.*

night after Easter;" ordaining, "that this interval should be a holy time; that peace and concord might, as was becoming, prevail among Christians, and all dissension be laid aside."^f

By this rule Canute, in his code of laws, pre-
scribes the period when all trials shall cease;^g adding, however, "all the days upon which a fast should be proclaimed by due authority; and the festivals of St. Edmund and Dunstan,^h which
"wise men had appointed to be kept by the English, on the 18th of March and the 19th of May."
"On these solemn festivals, therefore," the pious conqueror proceeds to enjoin, "let festive peace and tranquillity prevail among all imbued with the Christian faith, and far removed be all fraud and malice; and if any one owes another aught, by way of trust, or as compensation, let him pay it before these days arrive, or defer the payment till afterwards."ⁱ Among the laws attributed to this prince, we find also a re-enactment of the law, that
"criminals should not be put to death on a Sunday,

repeated with some additions, A.D. 1032, in the laws of Canute.

St. Edmund.
St. Dunstan.

The putting criminals to death on the Sunday forbidden by them.

^f Con. Enhamense, c. 18; Spel. Con. i.

^g Omnis ordalii, ac jurisjurandi jurisdictio.

^h That is, Edmund the Martyr, murdered by Elfrida, A.D. 978, on the day here fixed to be kept in commemoration of him; and Dunstan, archbishop of Canterbury, his contemporary, and one of the most eminent upholders of ecclesiastical discipline and authority in that age.

ⁱ Laws of Canute, Spel. Con. i. 546, c. 17.

unless they attempt to fly or resist, but be kept for execution till the festival was over.”^k

The laws of Edward the Confessor, circa A.D. 1056, enumerate the times of vacation.

From the period assigned by the laws of Canute as the legal vacation, those of Edward the Confessor took away the seven days from the eighth to the fifteenth day after Easter; adding, however, “the time between Ascension day and the eighth day after Whitsunday, the afternoons of all Saturdays from three o’clock, and those of the vigils preceding the festivals of the Virgin Mary, St. Michael, St. John the Baptist, all the Apostles, the Saints’ days whose festivals were announced on the Lord’s days, and the festival of All Saints, on the 1st of November, with the following feast days; and in every parish, the day of the dedication of the church, if it was kept, and the day of the saint to which the church of any parish for ecclesiastical purposes was dedicated.” The lawgiver proceeds to protect from molestation by any legal process, “every one who should devoutly come to celebrate the festival of any saint, while coming, staying and returning; all Christians going to church to pray, and all who, whether for their own business or in consequence of a summons, were on their way to or from the dedication of a church, or a synod, or chapter; and whoever, being excommunicate, should fly to seek absolution from a

Extent to which the suspension of legal proceedings carried by them.

^k Laws of Canute, c. 14, Spel. Con. i. 551.

bishop, if he obtained it." The violator of the law, at least in the last case, was ordered to pay to the party whom he injured a fine, to be imposed by the bishop, under the further penalty, if he refused to pay this fine, of being compelled to pay a second fine to the bishop, as a compensation for the contempt put upon his authority; that "thus there might be two swords, and one help the other."¹

The festivals mentioned in this law may require some further notice, as they have not yet come before us. What are the days mentioned as the festivals of the Virgin Mary, and whether more than one is meant, seems uncertain. Five festivals in honour of the Virgin Mary are noted for observance in a canon of the thirteenth century, viz. in memory of her Purification, on February 2nd; of the Annunciation, on March 25th; of her Assumption, or taking up into heaven, on August 15th; of her Nativity, on September 8th; and of her Conception, on December 8th.^m But of these, that in commemoration of the Conception would appear not to have been introduced into England until a later period than we are now arrived at, and indeed

Penalty on
the violation
of the law.

Festivals of
the Virgin
Mary.

How many
noted in A.D.
1287, by the
synod of Ex-
eter.

Festival of
the Concep-
tion not in-
troduced till
twelfth cen-
tury.

¹ Laws of Edward the Confessor, Spel. Con. i. 619. The law enacts that in the periods mentioned, there be Pax Dei et sanctæ ecclesiæ.

^m Sy. Exon.; Spel. Con. ii. 372, Can. 23; cf. Hamp. ii. 261. The festivals of the Visitation, on July the 2nd, and of the Presentation, on November 21st, are of later date; see Hamp. ii. 178.

That of the
Purification,

in A.D. 497.

That of the
Annuncia-
tion,

in A.D. 680,
and by some
supposed to
have been in
A.D. 430.

That of the
Assumption
said to be in
A.D. 364 to
384, but
doubtful whe-
ther earlier
than A.D.
483—602.

it seems very questionable whether it was observed at all before the end of the twelfth century.ⁿ The other feasts can show an earlier origin. That in memory of the Purification, called by the Greeks *ὑπαπαντή*, from the meeting with Simeon in the Temple, and known also as Candlemas, from the custom of bearing consecrated tapers in procession through the streets,^o was certainly celebrated in the age of Justinian;^p and appears to have been introduced about thirty years previously to his reign, by Pope Gelasius, on the occasion of the abolition of the ancient festival of the Lupercalia.^q That in memory of the Annunciation is at least as ancient as the council of Trullo;^r and is supposed, on the authority of a sermon attributed to St. Cyril, to have been kept in the fifth century.^s The introduction of a festival in honour of the Assumption of the Virgin Mary has been attributed to Pope Damasus.^t But no distinct notice of it appears to be found earlier than the time of the Emperor Maurice.^u Its celebration was enjoined by the

ⁿ Dresser de F. D. 208 ; Hild. d. D. F. 14 & 15.

^o Bede de Temp. Rat. c. 10, ii. 77 ; see Hamp. ii. 38.

^p Bing. xx. 8, 5.

^q Bede, Mart. ; Mart. Rom. 99.

^r By the 52nd canon of that council, it is mentioned as one of the days on which the Eucharist might be consecrated in Lent.
—Labbeo, x. 967.

^s Mart. Rom. 200.

^t Dresser, d. F. D. 148.

^u Mart. Rom. 516.

council of Mayence, and in the capitularies of the emperors of the house of Charlemagne, 200 years before the time of Edward the Confessor.^v The date of the event itself is variously fixed in the 34th, 43rd or 48th years of our era, and the 57th, 59th or 72nd years of her own age; and different opinions have been advanced as to whether her assumption took place at her death, or three or forty days after it; whether it was confined to her soul or extended also, as appears to have been more commonly believed, to her body.^x Lastly, the festival in honour of the Nativity of the Virgin Mary dates its origin, according to the opinion of Baronius, from the era of the council of Ephesus and the condemnation of the Nestorian heresy; and the day selected was fixed, if we are to give credence to the legend preserved by Durandus, upon the testimony of a holy man, who heard the rejoicings of a choir of angels, and to whom it was revealed that they were called forth by the recurrence of the anniversary of the birth of the Virgin.^y However, its claims are excluded upon the present inquiry, for the festivals enumerated in this law of Edward the Confessor are such as then had vigils, while

When the Assumption said to have happened.

That of her Nativity in A.D. 431.

But the vigil upon it not till A.D. 1227 to 1241.

^v C. 36; Labbeo, xiv. 73. Cap. ii. 35; Labbeo, xv. App. 504. For the nature of the Capitularies, see *infra*.

^x Hosp. d. F. C. 128; Martyr. Rom. 517.

^y Mart. Rom. 574; Durandus, vii. c. 28.

the vigil of the feast in honour of the Nativity of the Virgin was added by Gregory the Ninth.^z There remain three, any of which may have been intended.

Mention of
the vigil of
the Assump-
tion, A.D.
1222, in the
council of
Oxford.

The regard shown in later times to the festival of the Purification by the courts of law, who abstained from sitting upon it,^a is an argument in its favour. But as we find a canon attributed to the council of Oxford, two centuries after the time of Edward the Confessor, enumerating the vigil of the Assumption, as one to be strictly observed, while it makes no mention of the vigil of the Purification,^b or the Annunciation;^b and as the former festival may more peculiarly be considered the festival of the Virgin, since it is unconnected with any of the events in the life of our Lord, perhaps we may be justified in believing it to have been the day mentioned in the law now under consideration.

Institution of
feast of St.
Michael and
All holy An-
gels.

The day of the feast of St. Michael admits in like manner of some doubt. We have seen that one feast was appointed in his honour on the 8th of May,^c but there was another, on the 29th of September, more celebrated, and which still retains its place in our Calendar, in honour of St. Michael and All holy Angels. The reason of Michael being thus specially named, to the exclusion of Gabriel,

Why Michael
selected.

^z Hosp. d. F. C. 134, 135.

^a See *infra*.

^b Con. Oxoniense, C. 8; Labbeo, xxii, 1147.

^c See page 29.

or Raphael, names also contained in Scripture,—although, according to the classification of angels recognized in the middle ages, he belonged to the third or lowest of the three hierarchies, into which the angelic host were divided,^d—is to be found in the more active part assigned to him in Sacred Writ, or inferred from what is there mentioned. For he, as the prince of the Jews,^e was considered to be the destroyer who smote the first born in Egypt,^f the angel who led the children of Israel through the Wilderness;^g and, as the prince now of the true spiritual Israel, the Church, he it is who is represented as casting down the devil when there was

He is the
prince of the
Church.

^d These hierarchies contained each three orders, the first consisting of cherubin, seraphin, and thrones; the second of dominations, virtues, and powers; the third of princes, archangels, and angels. The first hierarchy were the immediate attendants upon the Deity; an office for which they were fitted, the seraphin by the perfection of their love; the cherubin by the excellence of their knowledge; and the thrones by their calm enjoyment, wherefore God was said to sit upon them. The second hierarchy were the governors of the universe, the dominations, as rulers; the virtues, as active powers, to whom nothing was impossible; the powers, by warding off the attacks of evil spirits. The third hierarchy had a more limited sphere, the princes over nations, as the prince of Persia mentioned in Daniel (x. 15); the archangels over a town, or body of men; the angels over individuals. Of these last, as being most concerned with men, the writers on the celestial hierarchy have much to say, founded, to an extent which might surprise many a Protestant, upon passages in the Bible. See Petrus de Nat. viii. 130.

^e Dan. x. 13, 21; xii. 1.

^f Exod. xii. 23.

^g Exod. xiv. 19; xxxi. 34.

Classification
of angels in
middle ages.

His appearance on Mount Gargan.

The victory given by him to the Neapolitans.

war in heaven,^h and who is the guardian of Paradise, the keeper of the souls of men.ⁱ But the immediate cause of the institution of this festival in his honour is said to have been the following circumstance: On Mount Gargan, about forty miles from Siponto, in Apulia, is a cavern, at the entrance whereof, a rich man of Siponto, at some time in the fourth century,—the date is variously fixed in A. D. 320 and 390,—found a stray ox, of which he was in search. He shot at it with an arrow; but the weapon rebounded, and wounded the shooter. Terrified at this phenomenon, he consulted the bishop of the place, who instituted a three days' fast; when the archangel Michael appeared to him, announced his name, and promised to take the city under his protection. The 8th of May is assigned as the date of this apparition.^k The promise of protection was fulfilled in a battle between the Christian Sipontines, and the Pagan Neapolitans, when the archangel again appeared to the bishop of Siponto before the mysterious cavern, and assured him of victory. This was secured by a fearful storm of thunder and lightning, accompanied by a trembling of the earth, such as struck terror into the hearts of the Neapolitans, and renewed the wonders of the age of Joshua and David.^l After these twofold appearances, the bishop was

^h Rev. xii. 7.

ⁱ Durandus, vii. c. 12.

^k Hosp. de F. c. 84 b, 138. ^l See Josh. x. 11; Ps. xviii. 7, 14.

anxious to dedicate a church in the sacred spot to St. Michael; but, hesitating to enter the cavern, consulted the then Pope,—it is not clear who he was, for different accounts mention Anastasius and Pelagius,^m—by whose advice he deferred so doing, until the archangel should give some intimation of his pleasure. He had not to wait long, before Michael again appeared, and stated that it was unnecessary to build him a church, as he would found and consecrate one himself, where divine service might be performed the next day. The next morning, accordingly, the bishop and people entered the cavern, and found a magnificent church, excavated from the rock, with three altars, and a fountain of the sweetest water dropping into a glass basin suspended by a silver chain. In memory of so remarkable a circumstance, the Pope consecrated the 29th of September in honour of St. Michael, and All holy Angels. The festival is also called, The feast of the dedication of St. Michael in Monte Gargano,ⁿ the last name being, however, sometimes altered into Tumba.^o Between these two festivals, the choice lies; but we shall probably not err, if, on the authority of the council of Oxford and the synod of Exeter, in both of which the latter festival alone appears to be mentioned,^p we decide in its favour.

Dedication of
the Church to
him—built by
himself.

A. D. 498.
A. D. 555.

A. D. 1222, and
A. D. 1287.

^m Hospinian. de F. C. 138 b.

ⁿ Petr. de Natal. viii. c. 130.

^o Metrical Festivals, 146 b, ap. Hamp. ii. 147.

^p Labbeo, xxii. 1148; xxiv. 811.

Feast of St. John the Baptist's nativity introduced.

A.D. 488.

Other feasts in honour of him.

Festivals of local celebration.

The other festivals are subject to less question. The feast of St. John the Baptist is probably that in honour of his nativity, kept on the 24th of June; which appears to have been celebrated in the latter part of the fifth century.^a It forms, as we have seen, one of the holidays fixed by the council of Erphurt,^r and is included also among the feasts of which, by the canon attributed to the council of Oxford, the vigil is directed to be observed;^s for this was, of all the feasts in his honour, the most solemn.^t Yet in the calendars of contemporaneous, or earlier date, than the age of Edward the Confessor, mention is also made of a feast in memory of his death,^u on the 29th of August, and another, in celebration of his conception, on the 24th of September;^x and Bede enumerates a third in commemoration of the discovery of his head, on the 24th of February.^y The matter is, therefore, not free from doubt.

The expression, "the saints days, whose festivals were announced on the Lord's days," appears to allude to such festivals as were of local celebration, a custom of which we have seen the exist-

^a Hospinian. de F. C. 113 b.

^r See page 30.

^s C. 8; Labbeo, xxii. 1147.

^t Hosp. d. F. C. 113 b; Durand. vii. De Decoll. S. Johannis, 174.

^u Festum Decollationis St. J. Baptistæ. Hamp. ii. 68, 160.

^x Hamp. ii. 154.

^y Martyr. iii. 394.

ence in a much earlier period;^a while, at a somewhat later epoch, we have abundant evidence of its occurrence in England. Thus we find one synod of Winchester, while it enjoins the uniform celebration of the festivals appointed to be kept by the previous bishop, and adds to them those of St. Dominic^a and St. Francis,^b allowing also the observance of days, specially kept in honour of saints to whom any churches or altars were consecrated.^c Another synod, of later date, in the same diocese, ordains for solemn celebration within its limits, the festivals of St. Swithin^d and St. Birinus.^e Fifty years before, we have a bishop of Salisbury ordering, that "no other festivals than certain which he enumerates, should be declared by the parish clergy,

Ordained in
England,
A.D. 1240,
Hen. III. by
a synod of
Winchester.

St. Dominic,
St. Francis.

So again,

A.D. 1308,
Edw. I.;

and by Æg-
dus, bishop
of Salisbury.
A.D. 1256,
Hen. III.;

^a See page 11.

^b The founder of the order of the Dominicans, A.D. 1221; kept Aug. 4th.—Hamp. ii. 97.

^c The founder of the Franciscan order, A.D. 1209; kept Oct. 4th.—Ib. 180.

^d Spel. ii. c. 256.

^e A bishop of Winchester; died A.D. 863. The festival appears to have been that of his translation on the 15th of July; it took place 110 years after his death, by order of Ethelwold, the then bishop. There is a tradition of the translation having been prevented by violent rain, lasting thirty-nine days; but of this the ancient chroniclers know nothing. See Simon of Durham; Twys. 159; Wm. of Malmesbury, S. P. B. 244. From the abundance of cures, wrought by his remains, he got the surname of Pius, i. e. The kind.

^f The first bishop of Dorchester, and the apostle of the West Saxons, kept Sept. 4th.—Hamp. ii. 31; Spel. Con. ii. 456.

and by the
parish clergy
up to A.D.
1287, Edw. I.;

according to a
custom autho-
rized, A.D.
967, by the
laws of Ed-
gar.

Institution of
the feast of
All Saints.

A.D. 607.

to be observed by their parishioners as days of cessation from the labours of agriculture," without which, "the earth could not be tilled;"^f and, in the intermediate period, we have proof of a similar usage on the part of the parish priests, from a canon of the synod of Exeter, which prefaces a statement of the festivals to be thenceforth observed throughout that diocese according to the holy canons, by a complaint, that one priest would announce a feast in his parish, when the next priest would not; so that it not unfrequently happened, that the people kept holiday in one parish, while they were at work in the parish adjoining.^g That the priests, at a period somewhat earlier than the date of this law of Edward, were in the habit of announcing to the people what days were to be kept as feasts, is clear from a law of Edgar, which, after providing for the celebration of the Lord's day as a festival, goes on to say, "the other days, as they are successively announced by the priest, are to be kept as festivals."^h

The festival of All Saints, or, as it was otherwise called, All Hallowsen Mass,ⁱ was instituted by Boniface the Fourth, when he obtained permission, from the emperor Phocas, to convert the Pantheon at Rome, in the language of the Church, the ancient

^f Cons. of Ægidius de Bridport, Spel. Con. ii. 302.

^g Can. 23; Spel. Con. ii. 372.

^h Spel. Con. i. 445; Laws of Edgar, c. 5.

ⁱ Hamp. ii. 11.

home "of all demons,"^j into a Christian church; and was originally ordered to be kept, in memory of the Virgin Mary and All Martyrs, on the 12th,^k or, as some say, the 13th of May.^l Three centuries later, Gregory the Fourth, as a matter of convenience to the worshippers, who came to Rome, and had a difficulty in obtaining provisions in May, transferred the festival to the 1st of November, when the harvest had been got in, and at the same time substituted the commemoration of All Saints for that of All Martyrs.^m And in this form

^j Bede, *Serm. Æst.* vii. 211. The object was, ut exclusa multitudine dæmonum, multitudo ibi sanctorum a fidelibus in memoriâ haberetur. *Ib.*

According to the belief of our Saxon ancestors, these demons gave abundant proof of their existence and power. An ancient homily on this festival says, "Whan the Romanus weron lordys of alle the worlde, thei madon a tempul in Rome, rownde as a dofhous, and callud it Panteon, and setton in the mydul of the tempul an ymage, that was chef Mawmete [*i.e.* idol] of alle Rome; and than of yche londe in the worlde another ymage, rounde alle about be the wall, and the name of the londe that the ymage was of, was wryton under the fete of the ymage; and alle weron so made by negromancy (the black art), that, whan any lond turned fro ye emperor of Rome, anone the ymage of that lond turned his faas to the walles, and hys back to the ymage of Rome. So whan the byschoppus comyn into the tempul, and segh an ymage turnyd, thei lokyd of what lond, and so gode and tolde the emperor."—*Mirk's Homily.* *Hamp.* ii. 149.

Saxon account of the Pantheon.

^k *Pol. Verg.* vi. 8; *Durandus*, vii. 34, *De Festo Omnium Sanctorum*; cf. *Hosp. de F. C.* 142.

^l *Martyrol. Rom.* 310.

^m *Hospinian. u. s.*

it has retained its place in our calendar to the present day.

**Wakes, what,
and when
instituted.**

Of the remaining festivals mentioned in the law of Edward, that of the day on which the church in any parish was dedicated deserves notice, because in these festivals originated the wakes of more modern times; a name derived, either from the verb *weihe*n, to consecrate,ⁿ or, as seems more probable, from the Saxon word for the vigil by which the festival was preceded.^o The institution of these festivals is to be traced to Gregory the Great, who advised Mellito, whom he had sent as abbot into Britain, to encourage the people to hold festivals around the churches on the days of their consecration, or of the commemoration of the martyrs whose relics were placed there, that he might prevent them from attending their idol feasts.^p

ⁿ Bing. xx. 8, 1.

**Vigils, how
changed from
feasts to fasts.**

^o Hamp. ii. 389. An old English sermon contains the following account of wakes:—"Then schall ye knowe how suche evenys were first foundon in olde tyme. In the begynning of holy Church, men and women comyn to Church over nyghte, wit candelus and other lyghte, and woken in the church alle nyghte in her devocyones; but after, by processe of tyme, men laften such devocyon, and ersedon songus, and dansus, and so fallon to lechery, and to glotony, and thus turned the good holy devocyon into synne: wherefore holy faders ordeyned the people to leve that waking, and faste the evon; and so turned the waking into fastyng; but yett hit holdith the olde name, and is called in Latyn, *vigilia*, that is, waking, in Englysch."—Hampson, ii. 125.

^p Bede, Ecc. Hist. i. 30.

But to return to our narrative of English legislation. The law of Edward the Confessor, above quoted, is said to have been confirmed by William the Conqueror.^q Among the laws of Henry the First is found one, by which he enumerates—as seasons when “neither laws should be made nor an oath be administered (except the oath of fealty, or by agreement of the parties), nor trial by battle,^r nor any mode of judicial examination resorted to,”—the same periods as those enumerated in the law of Edward, except that the period after Easter is extended to the fifteenth day; while no mention is made of that between Ascension day and the eighth day after Whitsunday, nor of the vigils of any feasts, except those of the Apostles. On the other hand, Friday, for the first time, is added to the exempted periods; during which, the law continues, “let true peace and blessed charity everywhere prevail, to the honour of Almighty God, by whose wisdom we are made, by whose nativity we are exalted, by whose death we are redeemed, by whose consolations we are saved. Let the debtor discharge his debt before, or wait until these days,

William the
Conqueror
confirms law
of Edward the
Confessor.

Law of
Henry I.
A.D. 1099 to
1135, enume-
rating seasons
of vacation.

^q Spel. Con. i. 619. It is mentioned by Hoveden, S. p. B. 601, among the customs declared by twelve men elected from all parts of the kingdom, for that purpose, by order of the king and the great council of his barons, in the fourth year of his reign, and which the king promised to confirm and uphold.

^r Which, it may be observed, is not mentioned in the Saxon laws.

devoted to joy and becoming pleasures, are past; and if any is detained in prison on a clear charge of a crime (literally, with a crime in his hands), let him be forthwith acquitted or condemned; but if there be only ground for suspicion, let him be discharged; bail, if necessary, being given for his return to take his trial at the proper time.”^s

Laws of
Henry II.
as to holi-
days.

The reign of Henry the Second, again, presents us with legislation upon the period of judicial holidays, but some doubt exists as to the precise nature of his enactments. There is said to be preserved in the Exchequer a law of his, following the words of the last cited law of his grandfather.^t And yet the historians assert that he ratified the laws of Edward the Confessor,^u by which, as we have seen, the vacations are somewhat differently disposed, and this statement agrees with the regulations of Chief Justice Glanville, who made some of his writs returnable on the eighth day after Easter,^x the day when, according to the last mentioned laws, the spring vacation terminated.

Times of the
terms.

The customs prevailing at a later period, in respect to the distribution of the terms and vacations of the courts of common law, appear however to

C. 62, Laws of Henry I.; Wilkins, L. A. S. 261.

Spel. O. of T. 4, c. 11.

^u Spel. Con. ii. 81.

Gl. ii. c. 11.

agree with the law preserved in the Exchequer.[†] Thus Hilary Term began the eighth day after the feast of St. Hilary, 20th January, and ended the 12th of February, a day intermediate between the two extreme days, January the 18th and February the 21st, upon which Septuagesima Sunday may fall. Easter Term began the fifteenth day after Easter, and ended on the vigil of Ascension Sunday. Trinity Term began the eighth day after Trinity Sunday, and continued, with a variable interval before the nativity of St. John the Baptist[‡] (24th June), till the 12th of July, the commencement of the summer vacation. Lastly, Michaelmas Term began on the eighth day after the feast of St. Michael, and terminated on the 28th of November, four weeks before Christmas day. How nearly these sittings corresponded with the times considered to be left free for judicial business by the

Coincidence
with those
fixed by the
canons.

[†] Spel. O. of T. 4, c. 12, 13, 14, 15. However, in the Exchequer, term began, excepting Trinity Term, eight days earlier than in the other courts, a practice of which the reason seems lost in obscurity. See 51 Henry III., *De Scaccario*; which orders sheriffs and accountants to come to the Exchequer, on the Monday after the feast of St. Michael and the utas of Easter; and the 14 Edward III., ordering estreats of weights and measures to be delivered, *Le Lendemain de St. Michael*; and Spel. 4, 15.

[‡] For Trinity Sunday may fall on any day between May the 17th and June the 29th.

canon law, will be seen by comparing them with those times as enumerated by Bracton.^a

How justice
administered
in the coun-
try.

But it will perhaps be objected by persons familiar with our present system of administering justice, that under this arrangement no small amount of business must necessarily have been done in the times appointed as vacations. If the whole of

^a See page 61. The feast days are counted inclusively in reckoning the periods above mentioned. The Scotch terms agree pretty well with the same periods, being Candlemas, 23rd January—12th February; Whitsuntide, 25th May—15th June; Lammas, 20th July—8th August; Martinmas, 3rd November—29th November.

The sittings of our own ecclesiastical courts were regulated by a reference to the same terms:

Hilary Term began the day after St. Hilary, 13th January; though in later times its beginning was postponed till the day after St. Wolfstan, 20th January.

Easter Term began the morrow of fifteen days after Easter.

Trinity Term began the morrow of Trinity Sunday.

Michaelmas Term began, anciently, the day after St. Fides, 6th October, though its commencement is now postponed till the 23rd of that month.

The terms last from twelve to fifteen days. The courts are however held at other times of the year, at intervals of six, seven or eight days, as business may require, but so as never to sit on a holiday. All proceedings, it is said, would be held void if done at a sitting on such a day.—Law, Translation of Oughton's *Ordo Judiciorum*, c. ii.

Return days
mentioned in
the reign of
Henry III.

The duration of the common law terms in the reign of Henry the Third, is clear from two statutes passed in his reign (51 Hen. III. c. 2 & 3); the one fixing the interval to elapse in actions relating to the right to land between the issuing of the writ and the return, or time appointed for the appearance of the

the time reserved for legal proceedings was occupied by the terms, when, it may be said, could the

defendant in court; and the other making a similar provision in the case of a writ of dower. The return days mentioned in these statutes are,

In Michaelmas Term.

The Octave of St. Michael.

Fifteenth day of St. Michael.

Three Weeks of St. Michael.

Month of St. Michael.

Morrow of All Souls.

Morrow of St. Martin.

Octave of St. Martin.

Fifteenth day of St. Martin.

In Hilary Term.

The Octave of St. Hilary.

Fifteenth day of St. Hilary.

Morrow of the Purification.

Octave of the Purification.

In Easter Term.

The Fifteenth day of Easter.

Three Weeks of Easter.

Month of Easter.

Five Weeks of Easter.

Morrow of the Ascension.

In Trinity Term.

The Octave of Trinity Sunday.

Fifteenth day of Trinity Sunday; or,

Morrow of St. John the Baptist.

Octave of St. John the Baptist.

Fifteenth day of St. John the Baptist.

For some account of St. Martin, see chapter iv.

St. Hilary was Bishop of Poitou, in Aquitain, in the fourth century, famed for having lived, though married, as if he had been single, and for having written against, and having been persecuted by the Arians. Breviarium Rom.

St. Hilary died A.D. 369, under Valens and Valentinian.

judges have gone their circuits, except in the periods when legal proceedings are said to have been forbidden? To judge of the force of this objection, it is necessary to examine the judicial system established by the Normans.

Judicial
system of the
Normans.

Now it is true that under that system all important proceedings were commenced and terminated in the king's courts; i. e. the King's Bench and Common Pleas, which held their ordinary sittings at Westminster. The hundred and county courts, wherein, according to the old Saxon constitution, justice was in the first instance administered,^b lost their importance under the Norman rule. In the reign of Henry II. the only criminal matters falling within the jurisdiction of the sheriff, as such,^c were theft, affrays,—where however his authority

County and
hundred
courts lose
their import-
ance.

Jurisdiction
of the sheriff
in criminal
causes.

Essoign days
and days of
grace.

The day first mentioned in each term was called *essoign day*, because the court then took the *essoigns*, or excuses, of those who did not appear according to the summons of the writs; but as—by a custom, traced by Blackstone to the Germans of the age of Tacitus (Com. iii. 278),—three days of grace were allowed to every defendant within which to appear, the court did not sit for the dispatch of business until the fourth day after that time. On the other hand, they continued to sit till the fourth day after the last return. Thus, e.g. Hilary Term was not considered to begin till the 23rd of January, nor to end till the 12th of February.

^b See Black. Com. iii. 35, 36.

^c For he appears to have sometimes exercised an extensive jurisdiction, in virtue of a special commission from the king. See Bracton, 3, 7,

appears to have been in the nature of an appeal from the lord's court,—and assaults, though producing wounds, if not alleged to have been against the peace of the king;^d and, of these, the jurisdiction in matters of theft was taken away by Magna Charta.^e In civil causes his authority extended only to appeals from the lord's court, on a claim of tenure set up by a freeholder; and to questions as to the right of different lords to a vassal, when no claim of the vassal to be a freeman was in question.^f For the law, as Bracton tells us, favoured liberty, “which is an inestimable thing, and that ought not to be perilled by being committed to the decision of ignorant or less discerning persons.”^g It is true also that, as an intolerable burden would have been thrown upon suitors resident in distant parts of the kingdom, if they had been required, in every case, to come up to the place where the king's court held its sittings, to procure justice, the remedy was devised, of sending out into different parts of

In civil
causes.

Jurisdiction
of the justices
in eyre or of
assize.

^d Gl. 1, 2.

^e 9 Hen. III. c. 17. See 2 Inst. 31.

^f Gl. 1, 3, 4; cf. Bract. 3, 7.

^g Bract. 3, 7. It must, however, be observed that Bracton enumerates debts, with cases respecting services, (owed by the tenant to the lord,) and customs, as some of innumerable other pleas, (placitis infinitis,) which were usually tried before the sheriffs under a writ quod justiciet. How little causes relating to personal property came before the higher courts, may be concluded from the absence of any thing more than an allusion to them in the works of Bracton, Britton, and Fleta; though Glanville devotes a chapter to them.

Jurisdiction
of sheriffs
under special
writs.

the country persons commissioned to try, sometimes all, sometimes certain classes of the cases, arising in those parts, and then ready for hearing.^b These were known as the justices in eyre, (i. e. itinere); or as they were also called,—from one of the most important classes of cases which they were usually commissioned to try, those relating to the possession of land,—judges of assize; assize being the name for the jury, whom, by the writ commencing this species of trial, the sheriff was ordered to summon, for the purpose of ascertaining by their verdict, the person *primâ facie* entitled to be tenant of the soil.¹

Were distinct from the justices of the King's Bench or Common Pleas.

Eighteen appointed in 1176 to different districts.

It seems clear, however, that these itinerant justices were for a long time after their introduction quite distinct from the justices of the King's Bench or Common Pleas. On their original appointment at the great council of Northampton, in the twenty-second of Henry the Second, we are told that the kingdom was divided into six districts, to each of which the king appointed three justices in eyre,

^b *Justiciarorum sunt alii itinerantes de loco in loco, sicut de comitatu in comitatu, quandoque ad omnia placita, quandoque ad quædam specialia, sicut ad assisas tantum, et geolas [liberandas]. Et qui auctoritatem habere incipiant sine sacramento, cum breve D. R. receperint de warranto. Sunt etiam justitii constituti ad quasdam assisas, duas vel tres, vel plures, qui quidem perpetui non sunt, sed expleto officio jurisdictionem amittunt.* Bracton, 3, 10.

¹ See note at the end of the chapter.

whose names are preserved to us.^k The districts are not identical with those of our modern circuits, though they do not very greatly differ from them.^l The number of these justices would of itself prevent us from identifying them with the judges of the supreme courts; and that they were distinct becomes quite clear, if we examine the lists of justices itinerant, with which the industry of Sir William Dugdale has furnished us; extending from the sixteenth of Henry the Second down to the twenty-second of Edward the Third, when they had become superseded by the introduction of the modern system.

From these lists it would appear that the only matter fixed at the council of Northampton, was, that persons should be sent through the different counties of England, to do justice; much like the *Missi Dominici* of the Frank emperors.^m But no

But the number very variable.

^k Hoveden, 313; Diceto, 588, who says the appointment was made *juxta consilium filii sui, coram episcopis, comitibus, baronibus, militibus, et aliis hominibus suis in hoc consentibus*, on the 23rd of January.

^l The names of the thirty-six counties may be found also in Spelman's Glossary, taken from Hoveden. It seems useless to enumerate them here, under the circumstances mentioned in the text. We may remark, however, that Yorkshire is divided into York and Richmond; and besides Cumberland, we hear of Copland, said to be the most mountainous part of that county, so called either from its peaked mountains, or its veins of copper. *Camd. iii.* 169. The names of justices in itinere in five coun-

Justices in Eyre mentioned, A.D. 1170.

^m See page 98 as to these; and see Appendix. This resolution seems to have been confirmed at another great council

certain districts were assigned for the circuits ; nor were the justices sent every year, or into every county when sent ; nor was their number at all fixed.

Thus, in the fifteenth of John, forty-three justices were sent into thirty counties ; in the ninth of Henry the Third, sixty-six justices into twenty-five counties ; in his seventeenth year five only, into the county of Berks.

Resident justices and justices in eyre distinguished by Bracton and Fleta.

In conformity with this state of things we find that Bracton and Fleta, in describing the different sorts of judges, distinguish the resident from the itinerant justices ;ⁿ among whom, however, some of the former class are often to be found. In the latter, persons influential in the various districts seem to have been frequently included, and not very rarely, bishops and abbots.^o

Council at Windsor, A.D. 1179.

held at Windsor three years later than that of Northampton, when England was divided into four circuits, and five justices assigned to each.—Hoveden, p. 337.

ⁿ We have already cited Bracton's description of the latter class ; of the former he says :—*Justitiariorum quidam sunt capitales, generales, perpetui, et majores, a latere regis residentes, qui omnium aliorum corrigere tenentur injurias, et errores ; sunt etiam alii perpetui certo loco residentes, (according to Magna Charta, c. 11,) sicut in banco, loquelas omnes de quibus habent warrantum terminantes ; qui omnes jurisdictionem habere incipiunt prestito sacramento.*—III. 1, 10. Fleta, ii. 2, makes the same distinction.

^o See App. for the numbers of clergy who appear to have gone circuits. Three bishops, one to each district, except the northern, are enumerated by Hoveden among the twenty justices of whose

It is therefore quite possible, that the circuits of these justices might have been performed during the terms, so as not to interfere with the periods of vacation already mentioned: and that they usually were so performed as not to trespass upon those seasons, may, I think, be reasonably concluded from the following considerations. It was a ground of challenge to the jury on an assize, and that whether it was proceeding as an assize, or as a jury, that the season was one when a man could not be canonically sworn:^p and although the appointment he gives the account mentioned in the last note. The list contained also the names of three other clergymen. In the *Chronicles of Jocelin*, monk of St. Edmundsbury, recently published by the Camden Society, we hear of Abbot Samson becoming a justice errant. Page 25.

^p Bracton reckons, among the grounds of exception to the proceedings in an assize, one *ex tempore* (4, 1, 34, § 2); and Britton, c. 52, enumerates seasons when the trial could not go on without a dispensation thus. "It is forbidden by the canon of holy Church, under pain of excommunication, that from the Septuagesima until eight days after Easter, and from the beginning of Advent until eight days after Epiphany, or in the days of the Four Times, or in the days of the Great Litanies, or in Rogation (or gänge) days, or in the week of Pentecost, or in the time of Harvest, or of Vintage, which dureth from the feast of St. Margaret, which is the thirtieth of July, until fifteen days after the feast of St. Michael the Archangel, or in the solemn days of Saints, no man be sworn upon the holy Evangelists, nor any secular plea be holden in the times aforesaid; but that all those times be given for prayer to God, and to appease debates, and to accord them that be at discord, and to gather the fruits of the earth, whereof the people may live: which were works of piety and charity."—Coke, trans. 2 Inst. 264.

Whether they
made circuits
in term time.

Excepted
days in Brac-
ton's time.

"bishops and prelates of holy church would grant dispensations for reasonable causes,"¹ yet the na-

¹ Per reasonable enchesons. Britton, u. s. Spelman, O. of T. 5, 5, and App. has collected some specimens of these dispensations. The first is a licence from the abbot of St. Albans, in virtue of his peculiar jurisdiction, to try assizes near Barnet, on the feast of St. Ambrose, which fell on the 4th of April, and therefore would usually come in the sacred time, either before or after Easter. The second is a patent of the 11th Henry III. It recites,—that the Archbishop of Canterbury, by the authority of the pope, and of his brethren, had granted to the king's justices the power of administering oaths within his province, from the beginning of Advent to the vigil of St. Thomas the Apostle (20th December), and from the beginning of Lent to the Sunday in which was chanted, *Isti sunt dies* (that next before Palm Sunday, Ann. Ec. Wig. Wharton, A. S. i. 494, A. D. 1257); in assizes of *darrein presentment*, *mort d'auncestor*, *novel disseisin*, the grand assize (which was a substitute for trial by battle introduced by Chief Justice Glanville, see Bl. Com. iii. 340); and inquests arising in respect of lands (*quæ de terra emergerint*, such as trespass, see 13 Edward I. c. 30)—that the king had engaged that this leave should not be drawn into a precedent (*non trahetur in consequentiam post eundem diem*)—and that he had made application to the Archbishop of York to grant a similar licence in his province, which he had accordingly done:—and it then makes a similar promise to that Archbishop, with the one recited to have been made to the Archbishop of Canterbury. This patent is followed by a letter from the King, to his beloved and faithful Stephen de Segrove, and Robert de Lexington, and their associates, the justices in eyre in the counties of Warwick, Leicester, Gloucester, and Worcester; informing them of the permission obtained; and directing them to continue their circuit, (*iter*), if necessary, up to the appointed time, with their wonted prudence and care. The third is a licence from the bishop of Norwich to Thomas Weyland, the king's justice, to try a parti-

ture of those which have been preserved, seems to show that they were not so generally granted as to turn the exception into the rule. Now the justices of assize are directed by Magna Charta to be sent through every county once a year;^r and it seems highly improbable that the circuits for taking other pleas were held at a different time from those for taking the assizes.^s It would follow therefore, that, during the reigns of King John and Henry the Third, the periods prescribed as vacations by the canon laws were generally observed in England

As to granting dispensations for the taking assizes in the exempted times.

cular assize concerning the last presentation to a church at Kirkby, in Lent. It bears date 50 Henry III.

^r C. 12; *qui cum militibus comitatum capiant in comitatibus assisas prædictas, &c.*

^s There is indeed a tradition preserved by Coke, (Litt. 153, b,) that the judges of assize anciently made circuit only once in seven years: and an ancient annal of the cathedral of Worcester mentions that the justices in eyre came there on the octave of St. John the Baptist, and the whole county refused to admit them because seven years were not passed since the justices had held sessions there last. (Whart. Ang. Sac. i. 495.) But perhaps, as the justices were not till long afterwards bound to hold their sittings in any particular places, the objection was to their returning to the same town: and thus the account may be reconciled with the provisions of the Charta. The passage is however a proof that they held assizes in term time. See *infra*, and 13 Edward I. c. 30. Evidence to the same effect is afforded by another passage from the same annalist, in which the itinerant justices are said to have sat at Worcester, A. D. 1249, from the octave of Epiphany to the feast of St. Scolastica, Feb. 10. In both cases the names of four justices are mentioned.

A. D. 1261.

as times when legal proceedings were suspended, at least in the king's courts.

Juries might be sworn in the exempted periods.

And yet it is clear from a law of Edward the First, that the objection from the season of the year, which was valid, as we have seen, against the swearing of the jury to try an assize, was not allowed to prevail in the case of an ordinary jury, if for any reason it was called upon to try a cause during the times fenced

Law of 3 Edward I. allowing assizes to be taken in the exempted times, A. D. 1275.

off by canonical prohibition. The law referred to is that which made the first open inroad upon this tabooed ground, guarded by so many preceding regulations. "Forasmuch," so runs this law, "as it is great charity to do right unto all men at all times, when need shall be, by the assent of all the prelates, it was provided, that assizes of novel disseisin, mort d'auncestor, and darrein presentment, should be taken in Advent, Septuagesima, and Lent, even as well as enquests may be taken ;^t and that at the special request of the king made unto the bishops."^u Now enquest appears, at that time, to have been the general name for all inquiries before a jury not of

^t Auxi bien come lem (l'home—l'on) fait les enquetes.

^u Statute of Westminster 1st, 3 Edward I. c. 51. It may be observed that Gregory IX., in the Decretals, published about fifty years before this time, (he was pope from 1227 to 1242), does not include Advent, Septuagesima, or Lent, except Passion Week, in the periods during which he requires judicial proceedings to be suspended—X. 2, 9, 5, Conquestus. See *infra*.

the nature of an assize.^v A wide province of legal inquests, what so inquiry would thus seem to have been considered called. as unaffected by the canonical regulations.

But the caution shown in the use of the privilege, when conceded, may strengthen us in the conclusion that no very general habit of trying any causes in the prohibited seasons could have prevailed.^x It would even appear as if for some time afterwards the legislature strove to prevent the trial of causes during these seasons, rather than to encourage it. Ten years after the passing of the last-mentioned law bring us to the important act by which was

Law of 13
Edw. I.
A.D. 1285,
prescribing
the times for
taking assizes.

^v Thus the writ called *de odio et atia*, by which the sheriff was directed to inquire into the truth of the charge brought against a man in prison on an accusation of murder, and who had not been indicted before the justices in eyre, is called in *Magna Charta* an inquisition (c. 26); and in the 13th Edward I. c. 30, (Statute of Westminster the 2nd,) the same name is applied to trials of trespass and other pleas generally. See also 27 Edward I. c. 4, and *Bl. Com.* iii. 401.

^x In the case of persons in prison, it will be remembered that the law of Hen. I. cited above, directs the trial to be proceeded with unless bail was given. (See page 52.) Indeed criminal trials seem to come under the allowed exemption of necessity. (See page 21.) When we consider that personal causes, not of a criminal nature, appear to have been tried in the sheriff's or inferior courts, (see page 57,) few inquests would remain to be taken before the justices in eyre, but those relating to criminal matters. Query does not the law refer to such inquests? The conclusion is strengthened by the mention of inquests *quæ de terrâ emergunt*, in the dispensation quoted, page 62; unless these refer to the cases where the assize was said *verti in juratam*. See note at the end of the chapter.

introduced that system of trials at *nisi prius*, whence arose our present circuits. "From thenceforth," it enacts, "two justices sworn^y shall be assigned, before whom and not others assizes of novel disseisin, mort d'auncestor and attaints shall be taken; and they shall associate to themselves one or two of the more discreet knights of the shire into which they shall come, and shall take the aforesaid assizes but three times in the year at the most, that is to say, once between the Quinzieme of St. John the Baptist and the Gule^z of August; and the second time between the feast of the Exaltation of the Holy Cross,^a and the utas (octave) of St. Michael; and the third time between the feast of the Epiphany, and the feast of the Purification of the Blessed

^y Which it would appear might mean either the justices of the King's Bench and Common Pleas, see page 58, or any of the regular justices in eyre, i. e. those appointed ad omnes causas generaliter, who, according to Bracton, took an oath qualiter se gerere debeant in itinere suo.—Bract. iii. 1, 11. The statute seems to draw a distinction between the justices in eyre and those of the bench, as if they were not the same persons.

^z I. e. the 1st of August, the feast of St. Peter ad Vincula; a festival of which the institution is variously narrated by different authors, but in which it would appear that two chains are commemorated; those in which St. Peter was bound by order of Herod; and those in which he was bound in the persecution under Nero. In connexion with the latter a story is told of a wonderful cure effected upon the daughter of Quirinus, a Roman tribune, of a complaint in the throat, in the time of Pope Alexander I., the sixth from St. Peter. See Hospinian, d. F. C. 124.

^a The 14th of September, see chapter iv.

Mary.”^b Septuagesima, Lent and Advent, notwithstanding the previous statute, are in this law excluded from the time appointed for the circuits of the judges, which, on the other hand, includes the greater part of Hilary term. The summer vacation adopted, rather than introduced by the canon law, and never regarded by it with the same reverence,^c is alone freely dealt with.

But the law did not long continue in this state. In 18 Edw. I. A.D. 1289, judges of assize directed to be taken from judges at Westminster, and to sit in vacation. Fourteen years later the judges of assize were im-
pliedly allowed to try causes at any time out of term, by a statute which also provided that they should be taken from the judges of the courts at Westminster, and dispensed with the necessity of two justices sitting upon the trial of such causes according to the provisions of the 13th Edw. I.^d

^b The 2nd of February, 13 Edw. I. Statute West. 2nd. c. 30.

^c See page 22.

^d “We, considering the intolerable damage of our people . . . for the more speedy ministration of justice to all persons suing in our court, have provided and ordained, that enquests and recognizances determinable before justices of either bench, from henceforth shall be taken before any of the justices before whom the plea is brought, being associate with one knight of the same shire where such enquests shall pass ; unless it be an enquest which requireth great examination ; and so from henceforth in taking such enquests, the justices shall do as to them shall seem most expedient for the common utility of our realm, notwithstanding the statute lately made at Westminster upon the taking of enquests, containing that, if any enquests be taken contrary to the form of the said statute, they shall be of none effect.”—27 Edw. I. c. 4.

In 4 Edw.
III. A.D. 1330,
justices of
assize allowed
to be of other
than the
judges at
Westminster.

In 14 Edw.
III. A.D. 1340,
the justices of
the king's
courts allowed
to try causes,
though not in
their own
court.

It is obvious that this statute must have involved the necessity of a greater intrenchment upon the periods of vacation than was required, when the justices in eyre were distinct persons from the justices of the bench. A subsequent statute did indeed relax the strictness of this provision.^e Yet the desire of having causes tried in the country by the judges of the courts at Westminster was still felt;^f and a method of rendering this object more easily attainable was at length discovered. It consisted in allowing a justice of another court than that where the suit depended, to try causes at nisi prius; while, if none of the justices of either bench should come into the county, the Chief Baron of the Exchequer, if a man of the law, or one of the justices assigned to take assizes in those parts, if king's serjeant sworn, were to be substituted in their stead.^g And thus the practice of assizes being habitually held during the ancient times of canonical vacation arose.^h

^e "Item it is ordained that good and discreet persons, other than of the places, if they may be found sufficient, shall be assigned in all the shires of England to take assizes, juries and certifications, and to deliver the gaols at the least three times in the year, and oftener if need be."—4 Edw. III. c. 2.

^f The preamble of the last cited statute recites, "Whereas . . . it is notoriously seen and known that divers inquests and juries have been taken, and yet be in divers counties of England, where no justice did come, to the great mischief of the parties that do sue, and also of the people of the country which be impanelled,"

^g 14 Edw. III. c. 16.

^h Towards the latter part of this reign, we find a statement

The laws already cited have partly shown that the justices appointed to take assizes had cognizance given them over every other species of cause. Several statutes conferred on them this power. Pleas of trespass, inquisitions of quare impedit,ⁱ and indeed of all other pleas pleaded in either bench, "unless they be of many and great articles which require great examination,"—when they were to be tried before the justices of the bench,—were appointed to be heard by them, by the Statute of Westminster the 2nd. And even these last might be decided by them, "if both parties desired that the inquisition be taken before some of the associates when they came into those parts."^k

Power to try other civil causes given to them

by the 13 Edw. I. A.D. 1203;

The 12th Edw. II. c. 3, and the 2nd Edw. III. c. 16, which seems to show, that the liberty to hold assizes at times forbidden by the canons was exercised with little scruple. It is a notice of the appointment of the Sunday next after the last return day in Trinity Term, for holding pleas of assizes in the county of Suffolk. 1 Beloes' Reports, 1.

12 Edw. II. A.D. 1318, and 2 Edw. III. A.D. 1328.

In the 32 Edw. III. pleas held on a Sunday.

ⁱ The action still in use to determine the right of patronage to a benefice.—Bl. Com. iii. 246.

^k The name of nisi prius is derived from the direction in this statute that no inquisitions should be determined by any justices of the bench, unless a day and place certain be appointed in the shire in the presence of the parties; and the day and place shall be mentioned in a writ judicial in these words: *Præcipimus tibi quod venire facias coram justitiariis nostris apud Westmonasterium in octabis St. Michaelis nisi talis et talis tali die et loco ad partes istas venerint duodecim.* The word prius was introduced in the writ afterwards.—Coke, 2 Inst.

extended their power of trying pleas of land, even to such as should require great examination,¹ and enabled them to record nonsuits and defaults, and "proceed thereon as they do in bench, i. e. in full court."

Power to try criminal matters given them also by the 13 Edw. I. A. D. 1285;

A series of nearly contemporaneous statutes brought the principal criminal, as these had done the civil, proceedings to the bar of the judges of assize. First, we find a law providing that writs of trespass ad audiendum et terminandum, (i. e.) in all those cases where the party accused was indicted before a grand jury,^m "should not be granted before any justices but justices of either bench, and justices in eyre, unless it be for a heinous trespass, where it is necessary to provide a speedy remedy, and our lord the king of his special grace hath thought it good to be granted."ⁿ A few years

the 27 Edw. I. A. D. 1299;

¹ "It is agreed that inquests and juries that be and shall be taken in pleas of land, that require not great examination, shall be taken before a justice of the place where the plea is, accompanied by a substantial man of the country, knight or other, so that a certain day be given in the bench, and a certain day and place in the country in the presence of the parties, if the demandant request it. And also the inquests and juries in pleas of land that require great examination shall be taken in the country in manner aforesaid before two justices of the bench." The 2nd Edw. III. c. 16, gives the same power at the request of the tenant.

^m Bl. Com. iv. 270. The words of the commission being to "inquire, hear and determine," and the inquiry being made by the grand jury.

ⁿ 13 Edw. I. c. 29, Stat. of Westm. 2nd.

later it was enacted,^o "that the justices assigned to take assizes in every county, incontinent after the assizes taken in the shires, should remain both together if they be lay, and if one of them be a clerk, then one of the most discreet knights of the shire being associate with him that is a layman, by the king's writ should deliver the gaols of the shires, as well within liberties as without, of all manner of prisoners, after the form of the gaol deliveries of those shires beforetime used." Early in the reign of Edward the Third, we find an act which aimed at checking the irregularities introduced during the weak government immediately preceding, by re-enacting the last-mentioned law.^p Eighteen years

the 2 Edw.
III. A.D.
1328;

the 20 Edw.
III. A.D.
1346;

^o By a statute which recites that "sheriffs and others had theretofore let out by replevin common felons, and openly defamed, being taken and imprisoned for murder and other felonies, and such as be not replevisable, . . . whereby such transgressors not replevisable, being so replevied, did, in order deceitfully to obtain their delivery, before the coming of the justices errant or other assigned for their deliverance, procure and suborn by themselves and their friends the jurors of the country, and threaten others; whereby, as well as for fear of the sheriff, and other that are let at large by plevin, as for fear of the thieves being so delivered, before the justices assigned for gaol deliveries, such felonies were concealed, and so remained unpunished."—27 Edw. I. c. 3.

^p 2 Edw. III. c. 2. "Whereas offenders . . . have been encouraged, because that justices of gaol delivery and of oyer and terminer have been procured by great men against the form of the statute made in the 27th year of the reign of King Edward's grandfather," &c.

and the 28
Edw. III.
A.D. 1354.

Justices of the
peace in-
vested with
judicial
powers in
A.D. 1360, 34
Edw. III.

later, the justices assigned to take the assizes were constituted into a species of general commissioners, to take cognizance of all offences committed within any county, in the administration of justice;^q while the abolition of the writ de otio et atia,^r a few years subsequently, took away the principal resource by which the trial of criminals was liable to be withdrawn from their jurisdiction.^s For the then recently

^q 20 Edw. III. c. 6. "We will and have ordained, that the justices assigned to take assizes shall have commissions sufficient to inquire in their sessions of sheriffs, escheators, bailiffs of franchises, and their under ministers, also of maintainers, common embraceours, (assisours, i. e. as would appear, persons who were paid to sit on assizes,) and jurors in the country; and of gifts, rewards and other profits which the said ministers do take of the people to execute their office, and that which pertaineth to their office, and for making the array of panels putting in the same suspect jurors and of evil fame; and of that maintainours, embraceours and jurors do take gifts and rewards of the people, whereby losses and damages do very grievously come daily to the people . . . and to punish all them which thereof shall be found guilty," &c.

^r As to which, see page 65.

^s 28 Edw. III. c. 9. "Item, because the people of this realm have suffered many and great evils and mischiefs, for that sheriffs of divers counties, by virtue of commissions and general writs granted to them at their own suit, for their singular profit, to gain of the people, have made and taken divers inquests to cause to indict people at their will, and have taken fine and ransom of them to their own use, and have delivered them; whereas such persons indicted were not brought before the king's justices to have their deliverance: it is accorded and established, to eschew all such evils and mischiefs, that all such commissions and writs before this time made shall be utterly repealed, and that from henceforth no such commissions or writs shall be granted."

established keepers of the peace, though invested, soon after this period, with the right to "hear and determine, at the king's suit, all manner of felonies and trespasses done in the county (for which they were appointed), according to the laws and customs thereof,"^t whence they acquired the more honourable title of justices,^u yet were confined to taking cognizance of smaller offences; their commission providing, that if any case of difficulty arose they should not proceed to judgment but in the presence of one of the justices of the Court of Common Pleas, or the King's Bench, or one of the judges of assize.^x

^t 34 Edw. III. c. 1.

^u Given them by the statute itself, impliedly, in the direction that writs of oyer and determiner be granted according to the statutes thereof made, and that the justices which shall be thereto assigned be named by the court, and not by the party. Cf. Bl. Com. i. 351.

^x Bl. Com. iv. 271. The first mention of these keepers of the peace is in the 1st Edw. III. c. 16, which enacts, that "in every county good men and lawful, which be no maintainers of evil, or barrators, (i. e. stirrers up of strife,) in the county, shall be assigned to keep the peace." The provision is re-enacted by the 4th Edw. III. c. 2, with a direction that "such as shall be indicted or taken by the said keepers of the peace shall not be let to mainprize by the sheriffs, nor by none other ministers, if they be not mainpernable by the law; nor that such as be indicted shall not be delivered but at the common law: and that the said keepers shall send their indictments before the justices assigned to deliver the gaols." The 18th Edw. III. c. 2, first gave them the power of trying offences, providing "that two or three of the best reputation in the counties shall be assigned keepers of the peace

Introduction
of justices of
the peace.

In the 32
Hen. VIII.

A.D. 1540, al-
teration of
Trinity Term;

and in the
16 Car. I.
A.D. 1640,
alteration of
Michaelmas
Term ;

Their ses-
sions.

But although the ancient vacations were thus occupied by the circuits; the times for the sittings of the full courts remained unaltered, till, in the reign of Henry the Eighth, the three last return days were cut off from Trinity Term; and two new return days, the first on the morrow of Trinity Sunday, and the second on the three weeks after it, were substituted for them; the commencement of the full term being at the same time fixed on the Friday after Corpus Christi,¹ instead of the Wednesday.² A century after this change, another

by the king's commission, and, at what time need shall be, the same, with others wise and learned in the law, shall be assigned, by the king's commission, to hear and determine felonies and trespasses done against the peace in the same counties, and to inflict punishment according to law and reason and the manner of the deed." The 34th Edw. III. c. 1, cited above, confirmed and more fully defined their powers; and the 3rd Hen. V. c. 4, fixed the times when they should hold their sessions, viz. the first week after the feast of St. Michael, the first week after Epiphany, the first week after the clause (i. e. the eighth day) of Easter, and the first week after the translation of St. Thomas the Martyr (i. e. the 7th of July); a regulation altered in some respects in modern times. Before the time of Edward the First, conservators of the peace were chosen by the freeholders in the county court, under a writ from the king, *de probioribus et potentioribus comitatus*.—Lamb, 16; see Bl. i. 350.

¹ As to which, see chapter iv. It was a moveable festival, falling eleven days after Whitsunday.

² 32 Hen. VIII. c. 21. The alleged causes of this change were, "the great peril and danger of infection of the plague, and sundry other sicknesses, to the king's loving subjects, as well nobles as others," from the season of the year in which this term

act of parliament cut off from Michaelmas Term the two, or, according to the practice of the Exchequer, the three first return days, fixing the first return on the three weeks from St. Michael.^a After an interval of rather more than another century, a further act limited that term yet more; fixing the first return on the morrow of All Souls, for the assigned reason that "in the beginning of the term of St. Michael very little business can be done on account of the several holidays observed by the high courts of record of our lord the king between the first day of the said term and the sixth of November."^b And at a very recent period we

and in 24
Geo. II. A. D.
1751, further
alteration of
Michaelmas
Term;

had been used to be kept; and "the let and impediment to a great multitude of the king's poor subjects, for provision and gathering in of harvest, and other their necessary business and livings."

and in 1 Will.
IV. A. D. 1831,
regulation as
to times when
the terms
should begin
and end.

^a A change for which the reason assigned is, that Michaelmas Term doth begin so soon after the feast of St. Michael that it is generally found to be very inconvenient to his majesty's subjects, both nobles and others, as well for the keeping of the quarter sessions next after the feast of St. Michael, and the keeping of their leets, law days and court barons, which they can by no means attend, in regard of the necessity of their coming to the said term so speedily after the feast of St. Michael to appear upon juries, and to follow their causes and suits in the law; the same time being the chief time of all the year for the sowing of land with winter corn, and for the disposing and setting in order all their winter husbandry and business, and for the receiving and paying of rents; and in many parts of the kingdom harvest is seldom or never innd till three weeks after the said feast,—
16 Car. I. c. 6.

^b 24 Geo. II. c. 48.

have seen the commencement and termination of the terms fixed by the legislature without any reference, except in the names of the terms, to the ecclesiastical solemnities to which they were originally adapted: Hilary Term being directed to begin on the 11th of January, and end on the 31st; Easter Term to begin on the 15th of April, and end on the 8th of May; Trinity Term to begin on the 22nd of May, and end on the 12th of June; and Michaelmas Term to commence on the 2nd, and end on the 25th of November. A provision is however made, that if all or any of the days, from the Friday before to the Thursday after Easter Sunday, shall fall in term time, there shall be no sittings upon them; but the term shall be prolonged for a corresponding number of days, and the same number shall be taken from the beginning and added to the termination of Trinity Term. The act further declares, that if any of the return days fixed by it shall fall upon a Sunday, the return shall be postponed until the following Monday.^c

Of saints' days
which fall
within term.

Such has been the course of English legislation in respect to the times of sitting of the courts of law. But within those times still fall some, and before the shortening of the terms used to fall more, of the days specially appointed to be celebrated with religious services. Of these days, according to the list contained in the Decretals, with the addi-

^c 11 Geo. IV. & 1 Will. IV. c. 70, s. 6.

tion of one, regarded in England with particular veneration, there fell:—in Hilary Term, the day of the Conversion of St. Paul, January 25th; and of the Purification of the Virgin Mary, February 2nd:—in the period within which Easter Term was limited, that is, between the 5th of April and the 5th of June, St. Mark's day, on the 25th of April; St. Philip and St. James's day, on the 1st of May, and Ascension day:—in the limits assigned for Trinity Term, that is, between May the 24th and August the 11th, St. Barnabas's day, on the 11th of June; St. John the Baptist's day, on the 24th; and St. Peter and St. Paul's day, on the 29th of that month:—and in Michaelmas Term, i. e. between the 4th of October and the 28th of November, St. Luke's day, on the 18th; and St. Simon and St. Jude's day, on the 28th of October; All Saints' day, on the 1st of November; and All Souls, on the 2nd.^d Whitsunday and the two fol-

^d The decretal referred to is X. 2, 9, 5, Conquestus. It enumerates, as the days on which "the bustle of judicial business ought to cease, inasmuch as they are known to be fixed, in order to promote reverence towards God"—"ob reverentiam Dei:"

Decretal by
Gregory IX.
A.D. 1230.

Christmas day.

St. Stephen's day.

St. John the Evangelist.

Innocents' day.

St. Sylvester, 31st December.

The Circumcision.

The Epiphany.

Seven days before and seven after Easter.

. .

Retained at
the Refor-
mation.

What days
the courts
observed.

What called
Grand Days.

lowing days, though falling in the limits assigned to Trinity Term, are omitted, because, as they changed with the term, they always fell in the vacation. Of these days, all but the Conversion of St. Paul and St. Barnabas' day, which, however, keep their place in our calendar, and All Souls, which does not, are among the holidays retained as such at the time of the Reformation.^e But before that era the Judges had, it would appear, been accustomed to disregard all these feasts, except, indeed, the Purification, the Ascension, the Nativity of St. John the Baptist, All Saints, and All Souls. And these they continued after the Reformation still to observe; the four first being called Grand Days, and celebrated with many festivities, which did not attend upon the last, because it was no longer kept as a holiday by the Church of England.^f

Ascension day.

Pentecost, and the two following days.

St. John Baptist's Nativity.

All the days of the Virgin (as to which, see page 39).

The days of the Twelve Apostles, especially of St. Peter and St. Paul.

St. Laurence's day, 10th of August.

The dedication of St. Michael.

All Saints' day.

All Sundays, and "the days which in each diocese the bishop, with the clergy and people, think fit to solemnize;" as in England they did All Souls' day. Spel. O. of T. 5, 2.

^e See the 5 & 6 Edw. VI. c. 3, repealed by 1 Mary, stat. 2, but revived by 1 Jas. I. c. 25, s. 48.

A. D. 1536.

^f Spel. O. of T. v. 4, Cunningham, Law Dict. Grand Days.

The reason assigned for this partial observance by the learned Sir Henry Spelman, is the greater solemnity with which the Church services were wont to be performed on those days, than on the others; for these were *Festa Duplicia*, i. e. festivals in which the responses and versicles were sung by two singing men, and every fresh portion of the service was begun by two persons: while the psalms were both preceded and followed by antiphons (i. e. choral responses); whereas on the other saints' days of those above enumerated, the antiphon was said only at the end of the psalm; and the third, sixth, and last only of the nine responses, which follow the nine lessons, were chanted by two voices; nor were the several portions of the service thus commenced.^s

What are
double festi-
vals, and fes-
tivals of nine
lessons.

In a canon of the 28th Hen. VIII. Ascension day, the Nativity of St. John the Baptist, All Hallows, or Saints' day, and Candlemas, or the Purification, are mentioned as the only days in term, whereon the courts did not sit.—3 Wilk. Con. 824. But in Queen Elizabeth's time, they observed all the days mentioned above, with the exception of the Nativity of St. John the Baptist, which, after Trinity Term was shortened, no longer fell within it.—Co. Litt. 135, a, 2; 2 Inst. 265. This however was only true, when Trinity Sunday fell on or before the 2nd of June; when that was not the case, term was adjourned by proclamation from the 23rd to the 25th of June—2 Bl. Rep. 528,—i. e. over St. John's day.

^s Durandus, vii. c. 1, s. 31. *Breviarium Romanum*, Rubricæ generales, 1, 2, 3. It should, however, be observed, that, according to the present Roman Breviary, all the days above mentioned are double festivals; but that this was not anciently the case,

St. George's day, April 23rd, not observed, though appointed a double festival, A. D. 1415, Edw. III.

It did not, however, follow, that if the clergy introduced a new double festival, the courts of law would keep it. Thus Archbishop Chichele directed St. George's day to be kept "by a double service, and as a greater double feast," with as much solemnity as Christmas-day; "while everywhere throughout his province should be a cessation from all servile work, that the faithful people might the more readily come to the churches to praise God, and implore devoutly the protection of the saint, and of all the blest, and pray fervently and instantly for the welfare of the king and the kingdom;" of which, "by the more abundant bounty of God, the saint was patron and special intercessor."^h And yet the courts of law did not observe this day, though it was kept with much solemnity at court, especially by the Knights of St. George.ⁱ

The times of sitting of the courts regulated by their own customs.

In this as in other matters connected with the sittings of the courts, their conformity to the requirements of the Church was controlled by their own custom. Thus, from very ancient times they appear to have disregarded the days of Rogation.^k

The lessons.

appears from the enumeration of *Festa Semiduplicia*, given by Durandus, u. s. The lessons are passages selected from the Bible, and the writings of the Fathers, relating to the different Saints' days and Sundays, on which they were read. On the *Festa Duplicia* and *Semiduplicia* there are nine of these; on other festivals the number is three. See *Breviarium Romanum*.

^h Spel. Con. ii. 669.

ⁱ Spel. O. of T. v. 2.

^k Spel. O. of T. v. 4.—We have seen that they are not men-

And though the terms were on the whole adapted to the seasons left free for business by the canons, yet the courts sat without scruple in the forbidden time, in Hilary Term, whenever Septuagesima Sunday fell between the 18th of January and the 12th of February; and in Michaelmas Term, whenever Advent Sunday fell on the 27th or 28th of November.

The change in Michaelmas Term, effected by the 24th of George II., struck out the feasts of All Saints and All Souls. But the other three of the five above mentioned continued until recently to be kept by the courts; though the two parliamentary holidays, of the 5th of November and the 29th of May, which were for some time observed by them, had, we believe, fallen into disuse.¹ However, they were kept, with many others mentioned in our concluding chapter, in the offices of the courts, until abolished by an act of William the Fourth. "For it being found," so this statute tells us, "that the observance of holidays in the several courts of common law during term time, and in

Alteration consequent on the change in the commencement of Michaelmas Term.

Holidays observed down to A.D. 1833.

A.D. 1833, all holidays but certain specified ones abolished.

tioned in X. 2, 9, 5, as indeed is also the case with Advent, Septuagesima, Lent, and the Ember days, notwithstanding the canons of the council of St. Medard. See page 30.

¹ Spelman says, that on the 5th of November the Judges used to go to church in state, O. of T. v. 2. And on the 29th of May, in the middle of the last century, there appears to have been a suspension of business on the 29th of May. 4 Burr. 2089. A.D. 1767.

the offices belonging to the same, on the several days on which holidays are now kept, is very inconvenient, and tends to the delay of justice;" it was enacted, "that none of the several holidays mentioned in the 5th and 6th Edward VI. c. 3, shall be observed or kept in the said courts, or in the several offices belonging thereto, except Sundays, the day of the Nativity of our Lord, and the three following days, and Monday and Tuesday in Easter week."^m

A.D. 1833. Distinction between term and vacation destroyed.

While this act abolished holidays, a previous statuteⁿ broke down the distinction between term and vacation, by allowing proceedings to be taken upon the writs by which it appointed all personal actions to commence, at all times of the year, except Sundays, Christmas-day, any day appointed for a public fast or thanksgiving, the interval between the Thursday before and the Wednesday after Easter;—and the time from the 10th of August to the 24th of October, during which it directs that no plea or declaration shall be filed or delivered.^o

A.D. 1676. Service of writs, &c. on Sunday made void.

For the more complete observance of Sunday, by the suspension of legal proceedings, provision had long before been made by the 29 Car. II. c. 7,

^m 3 & 4 Will. IV. c. 42, s. 43.

ⁿ 2 & 3 Will. IV. c. 39.

^o Accordingly the delivery counts for nothing. See *Mills v. Brown*, 9 Dowl. P. C. 151.

which renders void the service of all writs, process, warrants, orders, judgments or decrees (except in case of treason or breaches of the peace) on that day, and subjects the party executing them to an action for damages, at the suit of the party served, as if no such writ, &c. had been in existence.

Two regulations remain to be noticed before we conclude this branch of our inquiry. The one allows writs to be returned on any day, not being a Sunday, between the third day before the beginning, and the same time before the end of any term; and fixes the day of appearance on the third, or if that be a Sunday, the fourth day after the return.^p The other^q postpones the end of a term to the Monday, if the last day would otherwise be a Sunday; and enacts, that the days between the Thursday before and Wednesday after Easter, shall form part of Easter Term when they fall within it, though there are no sittings upon them. No provision is made for the first day of term being a Sunday; but it has been decided that it is to be counted, though no judicial act can be done till the Monday.^r

A.D. 1830.
Further regulation as to the return days and terms.

We may observe also, that power is given to the courts for the purpose of trials at bar, of declaring that any particular days in vacation shall be considered as term.^s

^p 1 Will. IV. c. 3, s. 2.

^q Ibid. s. 3.

^r Doe v. Roe, 1 Cr. & Jer. 483; 1 Dowl. C. P. 63.

^s 11 Geo. IV. & 1 Will. IV. c. 70, s. 7. See page 379 for further provisions of the same nature.

NOTE TO PAGE 58.

ON THE DIFFERENT KINDS OF ASSIZES.

Assizes, four sorts of. ASSIZES were of four kinds: Mort d'Auncestor; Novel Disseisin; Darrein Presentment; and Utrum. The object of the first was to ascertain whether the claimant was entitled to a particular land by descent from the party last seised. (*Fitz. N. B.* 195 E.; *Bl. Com.* iii. 185.) The writ of assize of Novel Disseisin lay for one who complained of having been recently turned out of possession. Recently, at first, meant since A.D. 1172. (*Hoveden*, 314, 307.) But the 3rd Edw. I. c. 39, brought down the epoch to A.D. 1229, where it seems to have remained. (*Fitz. N. B.* 177 E. *But see Co. Litt.* 153 b.)

Assize of Mort d'Auncestor; The assize of Darrein Presentment had as its object the ascertaining who was the last person who had been presented in peace to a benefice. (*Fitz. N. B.* 31.) Lastly, the assize of Utrum was for the purpose of determining whether (utrum) any particular land was or was not glebe. (*Co. Litt.* 159 a.) The name assize is derived from assideo, "to sit together." (*Co. Litt.* 153 b, 159 b; *Litt.* s. 234.) For an assize was a jury, but one before which no evidence was adduced; their verdict being regarded as the statement of a fact, which they knew of their own knowledge. (*Bract.* iv. 1, 6.) Its truth was therefore liable to be inquired into by a writ of attain; an investigation denied at common law to the verdict of a jury, properly so called,—because to impeach their decision was considered as the impeachment, by the party himself, of the sufficiency of the evidence upon which he

of Novel Disseisin; introduced, A.D. 1172.

Time altered, A.D. 1273.

of Darrein Presentment;

of Utrum;

in what respect an assize differed from a jury.

had relied (*Bract.* iv. 1, 34, s. 2),—but at length allowed by a statute of the reign of Edward the Third. (See *Bl. Com.* iii. 403.) It should be observed, that all collateral questions raised in the course of the assize, as, e. g. when said to be turned into a jury. the villenage or legitimacy of the claimant, were determined by a jury; and on these points, when the assize was said *verti in juratam* or *capi in modum juratæ*, no attaint lay at common law. (*Bract.* iv. 1, 34, s. 2, 3; *Fleta*, v. 22, s. 8.)

CHAPTER III.

LAWS AS TO LABOUR AND BUSINESS IN HOLY SEASONS, ANTERIOR TO THE REFORMATION.

Labour and Traffic on Holidays—Romans—Early Christians—Labour on the Lord's Day—Pliny—Justin Martyr—Pseudo Ignatius—Council of Laodiceæ—Law of Constantine—of Leo—Council of Orleans III.—of Auxerre—Constitution of Gregory I.—Council of Macon II.—of Chalons—Capitularies of Theodulphus—Council of Mayence—of Rheims—Capitularies—Constitutions of Nicholas I.—Labour on other Holy Seasons—Apostolic Constitutions—Council of Orleans I.—of Macon II.—Capitularies—Constitutions of Nicholas I.—Labour and travelling on the Lord's Day—Laws of Ina—Council of Berkhampsted—of Clovishoff—Labour and Trading in Holy Seasons, especially the Lord's Day—Laws of Alfred—Treaty of Edward the Elder and Guthurn—Laws of Athelstan—Constitutions of Odo—Laws of Edgar—Canons in his Reign—Council of Enham—Laws of Canute—Canon of uncertain date—in the Decretum Gratiani—Mandate of Eustachius—Council of Oxford—Synod of Worcester—St. Richard of Cirencester—Richard Duke of Gloucester—Constitution under Henry III.—Synod of Exeter—Archbishop Islip's Letter—Constitutions of Archbishops Mepham—Islip—Thoresby—Arundel—Chichele—Law of Edward III.—of Henry VI.—of Edward IV.—Caution against Judaizing—Working on other Feasts—Synod of Worcester—Constitution of Ægidius—Synod of Exeter—Council of London—Constitutions of Archbishops Mepham and Islip—of Archbishop Arundel—Days of St. Augustine—of St. George.

Practice of abstaining from labour on holidays known to the Romans.

THE practice of abstaining from various sorts of labour upon days consecrated by religious observances, like that of suspending at such seasons

judicial proceedings, was familiar to the Roman world, before the introduction of Christian ideas. Virgil enumerates the rural labours which might on festal days be carried on, without entrenching upon the prohibitions of religion and right; and the enumeration shows that many works were considered as forbidden. Thus it appears that it was permitted to clear out the channels of an old water course, but not to make a new one; to wash the herd or flock, if such washing was needful for their health, but not otherwise; to guard the crop from injury, by setting snares for birds, or fencing in the grain; and to burn the unproductive thorns.^a Traffic appears not to have been forbidden.^b Nor

But applied to certain sorts of work only.

Not to traffic.

^a Quippe etiam festis quædam exercere diebus

Fas et jura sinunt, rivos deducere nulla

Religio vetuit, segeti prætereundæ sepem,

Insidias avibus moliri, incendere vepres,

Balantumque gregem fluvio mersare salubri.—Geor. i. 268.

Deducere is explained by Macrobius, Sat. iii. 3, as equivalent to detergere, to clean out; nam festis diebus rivos veteres sordidatos detergere licet, novos facere non licet. We learn from the same source, that, according to the Jus Pontificum, festis diebus, purgandæ lanæ gratiâ, oves lavare non liceat; licet tamen, si, curatione scabies abluenda sit.—Ib. i. 16, 287; iii. 3. Hence the force of the epithet salubris. The lawfulness of fencing in a crop on festal days appears to have been disputed. Pontifices negent segetem feriis sepi debere, says Columella, i. 271. From Heynes' note on the passage in the Georgics.

^b Sæpe oleo tardi costas agitator aselli,

Vilibus aut onerat pomis: lapidemque revertens

Incusum, aut atræ massam picis urbe reportat.

Geor. i. 274.

The continuation of the former passage.

And not enforced by law.

did the legislators of those days intervene to enforce the observance of regard to the festal character of the day, where the feelings of the individual were insufficient to secure it. The laws, of which we propose at present to trace the history, begin with the Christian emperors: and at first they were very far from rigorous.

The early Christians did not require abstinence from labour on the Lord's day.

Indeed the early Christians do not appear to have attached much importance to the abstinence from labour, even on the Lord's day. It would rather seem that they were anxious to avoid the disposition to "judaize" in this matter, to which strict injunctions against labouring on the Lord's day would have given encouragement. Pliny's letter to Trajan, though it speaks of the custom of Christians to assemble on one day in the week, makes no mention of any repugnance on their part to working on that day. Yet we can scarcely suppose that a custom, so likely to appear mischievous in the eyes of the Roman governor, and so incapable of concealment, would not have been mentioned by him had he known of it, or would not have been known to him had it existed.^c

No mention in Pliny's letter A. D. 102, of such a practice.

In Justin Martyr's Apology, the custom of meeting on the Lord's day,

Nor in Justin Martyr's Apology, circa A.D. 166.

^c It must be remembered that Pliny was writing to Trajan for advice as to the course to be pursued towards the Christians, who were very numerous in his province of Bythinia; and that he gives Trajan all the information which he considered necessary to enable him to form a correct judgment in the case. The letter is Epist. x. 97.

as we have seen, is mentioned,^d but here also is an absence of any allusion to abstinence from labour, as a peculiarity either to be remarked or excused.

In one of the epistles of Ignatius, we find an exhortation not to "sabbatize;" an exhortation expanded by the subsequent paraphraser of these compositions into a warning against keeping the Sabbath (the Saturday), "after the manner of the Jews, as if delighting in idleness;" for he who will not work, neither let him eat, and in the sweat of his brow man shall eat his bread. Let each of us therefore keep the Sabbath spiritually: by delighting in meditation on the law, not by the repose and relaxation of the body; by admiring the works of God, not by eating meats dressed the day before, and drinking warmed up drinks, or walking prescribed distances, &c."^e But though immediately afterwards, we meet with earnest injunctions to "every friend of Christ to keep the Lord's day as a festival," there is no intimation that an abstinence from labour was either necessary, or even proper, to the right keeping of the feast.^f And

Nor in Ignatius' epistles, where he speaks of the proper mode of keeping that day, and the Sabbath.

^d See page 8.

^e Ad Magnesios, towards the end.

^f The passage in the edition of the letter, which appears to be generally looked upon as the genuine one, runs thus, "If therefore being exercised in the old dispensation, they have come to the newness of hope, no longer keeping sabbath, but living after the Lord's life, in which our life also arose, through him and his death how shall he be able to live without him?"—Ep. ad Mag. § 9.

So canon of the council of Laodicea between A. D. 357 and 367, only enjoins on the Christians to rest on the Lord's day "if they are able."

in the fourth century we find a canon enacting, "that the Christians ought not to judaize, and rest on the Sabbath, but to work on that day: and, giving the greater honour to the Lord's day, to keep leisure, *if they are able*,^s on it, as Christians; and if any should be found judaizing, let them be anathema in Christ." Now as the tendency of that age was certainly not to relax, but rather to increase the strictness and frequency of the observance of sacred seasons, the practice of the later period furnishes a strong negative testimony, against the existence, in earlier times, of any general habit, among the Christians, of abstaining from labour on the Lord's day. Of the notion, so familiar to protestant theology, that the Lord's day was substituted by Jesus Christ and his Apostles, in the place of the Jewish Sabbath, with only so much relaxation of its ancient strictness, as might be justified by the example of our Lord—in eating the ears of corn, healing the man with a withered arm, &c., on the Sabbath day^h—we are not aware that there is any trace to be found in the writers of the early Christian ages.ⁱ

^s Can. 29, Council of Laod. ; Labb. ii. 563.

^h Matt. xii. 1—13 ; Luke, vi. 1—10 ; xiii. 11—17 ; xiv. 1—6. The example is not often extended so far as the last passage might warrant. The 1—24 verses imply the presence of our Lord at a feast given by one of the Pharisees on the Sabbath day.

ⁱ The so called Apostolic Constitutions do indeed direct that servants should be allowed to be at leisure on the Sabbath and

The first law respecting the abstinence from work on days kept holy by the Church, relates, like the first law respecting the suspension of judicial proceedings at such seasons, to the Lord's day.

"On the venerable day of the sun," says Constantine, "let all the population of the towns rest, and the labours of the artisans cease. The agriculturist however may freely and lawfully attend to the cultivation of the fields; since it not unfrequently happens that no day is more favourable for committing the seed to the furrows, or the vines to their trenches; and the advantages given us by the providence of heaven ought not to be thrown away out of regard for the day."^k

Law of Constantine, A.D. 321, against working on the Lord's day at trades.

Sixty years later we find the transacting business¹ on the Lord's day, among the matters prohibited, by a law already cited for another purpose. But the exemption granted by Constantine to agricultural labours remained untouched. Nor was it taken away by Justinian, in whose code the law of Constantine was embodied; but it did not escape the legislative activity of his successors. Among the laws of the Emperor Leo, surnamed the Philoso-

Law of Theodosius, A.D. 386, against transacting business then.

The prohibition extended to agricultural works, A.D. 886 to 910, by the Emperor Leo the Philosopher.

the Lord's day; but this, though it may be considered as showing a tendency to "judaize," as prevalent among the Christians, whose customs are described in those writings, is obviously very different from the protestant doctrine, referred to above. Ap. Con. viii. 33; Labbeo. i. 381.

^k 3 C. 12, 4, Omnes judices.

¹ Negotiorum intentio.—C. Theod. xi. 7, 13. See page 18.

pher, we find one,—which treats the reason assigned by Constantine for permitting the “dishonouring” of the Lord’s day by the toils of the farmer, as “of no weight, and indeed futile, since not the diligence of the agriculturist, but the virtue of the sun, when it seemeth good to the bestower of the fruits of the earth, supplies the abundance of the harvest;”—and, after denouncing the law itself as one “which counted the service of the Lord as of little worth, and prescribed an ordinance opposed to those to whom the Holy Spirit had given the victory, in opposition to every adversary,” proceeds to appoint, “as pleased the Holy Ghost, and the Apostles ordained by him, that all in this sacred day, wherein we were restored to our immortal nature, should abstain from labour; and neither the agriculturists, nor any others, should undertake in it any unlawful task.”^m

Some kinds of labour on the Lord’s day permitted, A.D. 538, by the third council of Orleans.

But this law, though from its notice of the earlier law of Constantine we were unwilling to omit it, carries us beyond the period when our attention must be confined to the legislation of the western states. Three centuries and a half before the time of Leo, the observance of the Lord’s day as a season of abstinence from labour occupied the attention of the third council of Orleans. Its canons manifest a desire to restrain the people either from disre-

^m Leonis, c. 54.

garding the day, or observing it with the punctiliousness of the Judaical Sabbath. "Whereas the people are persuaded," so runs the law, "that they ought not to travel on the Lord's day with horses, or oxen and carriages; or to prepare any thing for food; or do any thing conducive to the cleanliness of houses or men; things which belong rather to Jewish than to Christian observances, we have ordained that on the Lord's day what was before lawful to be done may still be done. But from rural work, that is, ploughing, the culture of the vine, reaping, mowing, thrashing, clearing away thorns or hedging, we judge it better to abstain: that the people may the more readily come to the churches and have leisure for prayer."ⁿ The prohibitive part of this law was repeated, with a reference however to excepted cases, forty years later, by the council of Auxerre; which forbid "on the Lord's day oxen to be yoked, or any work performed, except for the appointed causes."^o In the same spirit with these canons were the injunctions given by Gregory the First, at a date not far removed from this period, to the people of Rome, and which 250 years later were repeated by Nicholas the First in his letter of instructions to the Bulgarian converts.^p The forbidding all labour on the

Though abstinence from rural labours enjoined.

This injunction repeated A. D. 578, by the Council of Auxerre.

Injunctions in the same spirit by Gregory I. A. D. 603.

Repeated by Nicholas I. A. D. 858—867.

As to working;

ⁿ C. Aurelianense, III. c. 29; Labb. ix. 19.

^o De causis constitutis.—C. Autissiodorensis, c. 15; Labbeo, ix. 911.

^p Cap. 10; Labb. xv. 406.

and bathing
on the Lord's
day.

Lord's day he styles a perverse doctrine, and the teaching of Antichrist;¹ and at the same time condemns another opinion of the same kind, viz. that bathing on that day was unlawful; for then, says he, "it must be unlawful also to wash one's face. Bathing is lawful on the Lord's day, for the necessities of the body; done as a luxury and for pleasure, it is to be condemned on all days."² But while he thus protests against a "precisely enforced and painful strictness of observance," he urges the desirableness of "ceasing from worldly toils" upon the day of the Lord's resurrection, that we may be able to give ourselves up to prayer; and thus expiate any sins of negligence into which we may have fallen during the week.³

. More strict
enforcement
of a cessation
of labour, A.D.
585, in the
second council
of Macon.

But a tendency to greater strictness of legislation upon this subject manifests itself at the close of the sixth and in the subsequent centuries. Seven years after the council of Auxerre, the second council of Macon enjoined, "that no one should allow himself on the Lord's day, under the plea of necessity, to put a yoke on the necks of his cattle; but all be occupied with mind and body in the hymns and praises of God. For this is the day of perpetual rest; this is shadowed out to us by the seventh day

¹ Who would affect a great reverence for that day, because on it, after having pretended to die, he would pretend to rise again.—Labbeo, x. 341; Gregory, Ep. xi. 3; De Cons. 3, 12.

² Ibid.

³ Labbeo, u. s.

in the law, and the prophets; let us then yield to the Lord, by whose love we know ourselves to be freed from the bonds of error, a willing service; not because he requires of us, that by the constraint of the body we should celebrate his day; but he seeks from us obedience, by the which, trampling on earthly things, we may, through his mercy, be raised to heaven." The disregard of this wholesome exhortation would, so the canon adds, as has been before mentioned in respect to the pleading of causes on that day,^t draw upon the offender both "the wrath of God," and "the unappeaseable anger of the clergy;" a threat defined as equivalent, in the case of a countryman, to "a grievous flogging."^t We have already seen the punishment of the monk and the advocate.^u

The precept of Guntram, before mentioned to have accompanied these canons, enjoins "the suspension on the Lord's day of all bodily labour, except for the preparation of food."^x By the middle of the next century, however, these laws appear to have fallen somewhat into neglect. Thus we find the council of Chalons prefacing the re-enactment of the prohibitions against doing rural work on the Lord's day, contained in the preceding

This injunction revived by the council of Chalons, A. D. 649.

^t Rusticus aut servus gravioribus fustium ictibus verberabitur.
—Con. Matisconense, II. c. 1; Labb. ix. 947.

^u See page 24.

^x Labbeo, ix. 962.

canons, by a statement that "it was not introducing a new regulation, but merely reviving an ancient one;"¹ of which it endeavoured to enforce the observance by a threat of exclusion from the communion.²

Capitulary of
Theodulphus,
Bishop of
Orleans, A.D.
797, on the
observance of
the Lord's
day.

But the high importance attached to the observance of the Lord's day by the council of Macon, was not the offspring of feelings peculiar to that age, or that locality. The century following affords us, in the capitularies of Theodulphus, Bishop of Orleans, one which urges with peculiar earnestness, and no mean eloquence, the claims of the Lord's day to regard. "For since in it God created the light; in it he rained down manna in the wilderness; in it the Redeemer of the human race, who of his own will died for our salvation, rose again from the dead; in it he poured out the Holy Spirit on his disciples, such ought to be our reverence for it, that nothing should be performed but prayers

¹ Non aliquid novi condentes, sed vetera renovantes, ut in ipso die dominico ruralia opera, id est arare, secare, messes metere, exartos facere, vel quidquid ad ruris culturam pertinet nullus penitus faceret. Quod qui inventus fuerit faciens sub disciplina distictionis omni modo corrigatur.—Labbe. x. 1193; Can. 68.

² This did not, like the greater excommunication, exclude the party from the church. He might remain to hear the psalmody and reading of the Scriptures, and the sermon, and prayers of the catechumens and penitents, but he had to depart with them, and was therefore not included in the prayers then offered up.—Bing. xvi. 2, 7.

and the solemnities of the mass, and what is connected with the preparation of food; and if there be a necessity for sailing or travelling, and licence is given, it should be under the condition, that the attendance on mass and prayers should not be omitted, if there be opportunity.”^a The canon goes on to prescribe the times when men should come to church, and continues, that at that time “should be no quarrelling; but men should keep holiday to God alone, in the celebration of the sacred offices, the bestowing of alms, and holding a spiritual banquet with friends and neighbours and strangers, in the praises of God.”

Thirty years later, the substance of this law is repeated by Bishop Jona, a successor of Theodulphus, in a regulation of his own; wherein he exhorts all his flock, on “the Lord’s day, as far as possible, to divest themselves of worldly cares and anxieties; and both themselves act as fitted the reverence due to such a day, and by their example teach and lead those under them to do the like.”^b The one and the other injunction may be appropriately compared to a canon to be found in the *Decretum Gratiani*, which declares, “that on the Lord’s day nothing else should be done than to keep holiday to God; no work on that day should be performed; but it should be passed in hymns and psalms and spiritual

Repeated by
Bishop Jona,
A.D. 828.

Canon in the
Decretum
Gratiani to
the same
effect.

^a Spel. Con. i. 585, can. 41.

^b D'Achery, *Spicilegium*, ii. 335.

songs;”^c and the feeling out of which they arose, makes itself manifest in other ordinances of a date not far removed from their own.

Canons
against labour
thereon A. D.
813, council
of Mayence
and Rheims.

And against
largesses.

In the early part of the ninth century, in two councils, held, the one at Mayence, and the other at Rheims, in the reign of Charlemagne, canons were made against doing servile work on the Lord’s day; which is directed by the former council to be observed with all reverence, while the latter, grounding its prohibition on the “precept of the Lord,” proceeds also to prohibit public largesses on that day.^d It is embodied in the capitularies of the Frank emperors;^e and its observance was enforced by severe penalties, which we find specified in another law of the same code to this effect. To yoke a pair of oxen to a cart, and walk by the side of it, on the Lord’s day, involved the loss of the right ox; to do other servile acts, prohibited by canonical authority, rendered the offender liable to pay a fine to the clergy, and also to perform whatever penance they might impose, according to the

^c De Cons. 3, 16, *Jejunia sane* : attributed to St. Appollonius, who flourished at the end of the second century.—Mor. D. H.

^d *Donationes in publico*.—Con. *Moguntiacum*, c. 37; Labbeo, xiv. 68; Con. *Rhemense*, c. 35; Id. 78.

^e Cap. v. 153; Labbeo, xv. app. 371. The capitularies were heads of instruction given by the Emperors to the officers called *Missi dominici*, whom they sent out from time to time to administer justice, and reform abuses in different provinces; somewhat as in England the original justices in eyre.—De Roye de M. D. Labbeo, xvi. app. 891.

nature of the offence; and the judges are directed to aid the clergy and enforce obedience to their mandates.^f

Yet we must not suppose that the Lord's day was regarded with the painful feelings of constraint, which the Jews of later times felt in regard to their legal Sabbath. Such at least was not the case in the minds of the highest ecclesiastical authorities. In the middle of this century, Pope Nicholas I. addressed to the newly converted Bulgarians a letter of instruction, to which we shall have occasion more than once to refer, for their guidance in various points of Christian morals. He tells them in it that there are no days whereon necessity may not justify the Christian in marching out to fight, in giving battle, or in undertaking a journey.^g And he justifies his opinion by referring to the account of the Jews in Maccabees,^h of whom many were slain, because they would not defend themselves on the Sabbath; and to the assault upon Jericho on the seventh, which he considers as the Sabbath, day. For "our hope," he says, "is not to be placed in days, but our salvation is to be looked for in the living and true God alone;" though where inevitable necessity does not press upon us on these and other holidays which he enumerates,

Yet the Lord's day not treated as the Sabbath by the Jews.

Nicholas I. on lawfulness of battles or journeys thereon, A. D. 852, 867.

^f Cap. v. 340; Labbeo, xv. app. 600.

^g Ambulari, c. 37; Labbeo, xv. 414.

^h Book i. 1.

and of which we are about to treat more fully, "our leisure should be wont to be more intently occupied in prayer and attendance on the mysteries of such great festivals."¹

Abstinence
from labour
on other days
besides the
Lord's day,
enjoined in
the Apostolic
Constitutions.

Thus do we find both in the Eastern and the Western Empire, both under the Empire and in the states which followed it, legislative provisions for the prevention of labour on the Lord's day. But these injunctions, as has been already intimated, were not confined to that day. At a comparatively early period in the Eastern Church, we meet with directions that servants should be left at leisure,^k during the great week,^l and the next; "for the one was the week of the Passion, and the other of the Resurrection, and it was needful to teach them who He was, who had died and risen again, and who He was who had given Him up to death, and raised Him from the dead;—so on the day of the Ascension, for that brought to a close the economy of Christ;—on the day of Pentecost;—on the festal day of the Nativity, because on that day, beyond all expectation, such joy was given to men, and God the Word, the Son of God, was born of the Virgin Mary, for the salvation of the world;—on the festal day of the Epiphany, because on that day the divinity of Christ was declared at his baptism, by the testimony

¹ C. 34, 37, 46; Labbeo, xv. 414, 418.

^k Apost. Const. viii. 33.

^l Passion Week, see page 14.

of the Father, and of the Holy Ghost, who, in the form of a dove, pointed out to the bystanders Him to whom the testimony was given;—on the days of the Apostles, for they were your masters to teach you of Christ, and gave you the Holy Spirit;—and on the days of St. Stephen, the first martyr, and of the other martyrs.” The Apostolic Constitutions, But not by any other laws of the East. where these directions are to be found, are probably records of the practice of the Church in the district in which their author lived. But the observance of these days, or of any other than the Lord’s day, by abstinence from labour, is not, we believe, enjoined by any Eastern law in the seven first centuries. In the West it is otherwise.

The first council of Orleans, by a canon, which afterwards found admission into the collection made by Gratian, prescribes that on the three days of Rogation preceding Ascension day, servants, male and female, shall be set free from all work, that the people might the more easily come to the churches.^m But by the first council of Orleans A. D. 511, abstinence from labour enjoined during the days of Rogation.

The second council of Macon includes in the seasons when work was prohibited, the six days of Easter Week.ⁿ The ordinance of Guntram, already mentioned,^o extends to all the seasons when, “according to custom, the people were gathered to the venerable oracles of the temples, from feelings of devotion.” The capitulary, quoted above,^p extends the same And by that of Macon II. A. D. 585, in the six days of Easter Week. And, by the precept of Guntram, on all great festivals. As also by the capitularies.

^m Con. Aurelianense, I. c. 37; Labbeo, viii. 355; De Cons. i. 3.

ⁿ Can. 2.

^o See page 24.

^p See page 98.

And the letter
of Nicholas I.
A. D. 852 to
869.

injunctions to the principal festivals which it contains in respect to the Lord's day.¹ And the before cited letter of Pope Nicholas I., to the Bulgarians, enumerates, as days to be observed by an abstinence from labour, the same list which we have before noticed as fixed by him for a cessation from judicial business.² Nor do the English laws, to which our attention must now be confined, fall short, in this respect, of their continental types.³

The first English law preserved to us, on the subject of our present inquiry, is of a date more than a century previous to the age of Charlemagne, and relates to the observance of the Sunday. Ina,

¹ Similiter et de præcipuis festivitibus observari placuit.

² C. 11 ; Labb. xv. 407 ; see pages 29 and 100.

Canon attributed to the
council of
Lyons, A. D.
567.

³ It is not easy to ascertain what were the days referred to by this law of Guntram and the capitulary in question. The canon attributed by Gratian, De Cons. iii. 1, to the first council of Lyons (Labbeo, viii. 567), gives the following list of days to be kept as holidays : Christmas ; the days—of St. Stephen ; St. John the Evangelist ; the Holy Innocents ; the Circumcision ; the Epiphany ; the Purification of the Virgin Mary ;—Easter, with the week following ; the three days of Rogations ; Ascension day ; Pentecost ; St. John the Baptist's Nativity ; the days of the Apostles, especially of St. Peter and St. Paul ; the days—of St. Lawrence ; of the Assumption and Nativity of the Virgin ; of the dedication of the church of St. Michael the Archangel ; and of the church of each place ; of all Saints ; and of St. Martin ;—and the festivities which each bishop in his diocese with the people might fix, which were to be announced only to those living in the places where they were kept. The observance of the other festivals throughout the year is directed neither to be hindered nor enforced. But this canon is considered to be of a later date.

king of the West Saxons, who in the latter part of his life retired from his throne to a monastery, enacted, "that if a master obliges his slave to work on the Lord's day, he shall pay thirty shillings fine, and the slave be set free; but if the slave presumes to work without his master's order, he shall be flogged, or purchase exemption by a fine. A freeman guilty of the like offence is either to lose his liberty, or pay sixty shillings. A priest incurs a double penalty."^t

The laws of Ina prohibit labour on the Lord's day, A. D. 693.

The canons of the council of Berkhamstead, held under Bertuald, Archbishop of Canterbury, in the fifth year of Withred, king of the Cantians, contain regulations very similar in their character, but somewhat more extensive. The master who obliges his slave to do any servile work, between sunset on the Saturday, and sunrise on the Monday, is to pay a fine of thirty shillings. The alternative of giving freedom to the slave is indeed not mentioned; nor is any provision made for the case of the slave working without his master's orders: on the other hand, there is a direction that the slave, guilty of travelling on the forbidden days, shall pay a fine of six shillings to his master, or be beaten. While the freeman who shall do so, is to be liable to a fine of undefined amount, the half whereof is to go to the informer.^u

As do the canons of the council of Berkhamstead, A. D. 697.

^t Spel. Con. i. 183.

^u Liber homo sit reus collistrigii mulctæ; et quieum detulerit

Canon of the council of Clovishoff, A.D. 747, against travelling on the Lord's day.

Travelling on the Lord's day seems indeed to have been a not uncommon offence, if we may judge from the earnest exhortations contained in the canons of the council of Clovishoff or Cliff,* held under Cuthbert, Archbishop of Canterbury, in the reign of Edidbald, King of the Mercians; and addressed to the abbots and presbyters. It commands them "on that most sacred day to remain in their monasteries and churches, and perform the solemn service of the mass; and laying aside all external business, or meetings with secular persons, and journeyings, unless some imperative reason requires, to instil into the minds of those placed under them,† by discoursing upon texts of holy Scripture, the rule of a religious conversation and a holy life."

Constitutions of Egbert, A.D. 749, as to the observance of the Lord's day.

Nearly contemporaneous with these canons are the constitutions of Egbert, Archbishop of York, in which he tells us, in language not unlike that cited from the epistles of Ignatius, that Christ "sanctified the Lord's day by his resurrection; for

dimidium habeat, tam mulctæ quam virgildi.—Spel. Con. i. 195, Can. 10, 11, 12. Collistrigium seems to be the pillory; virgildum or weregeldum is the ransom affixed, literally, to the crime of killing a man.—Duc. Gloss.

* Its site is disputed between Cliff at Hoo, near Gravesend, and Shovesham near Abingdon. See Camd. i. 156, 244. Camden seems inclined to favour the pretensions of the last named place.

† Subjectis famulis.—Spel. Con. i. 299, Can. 14.

the Lord's day is the commencement of a new era,^a and the day of the resurrection of Christ, and the day of Pentecost; and therefore is it sacred, and we ought spiritually to keep Sabbath on it; that is, by keeping holiday^a from servile works, namely, sins; for he who commits sin is the servant of sin."

At the same time, by another canon, the archbishop enjoins that no business be transacted on the Lord's day.^b Between this date and our next seems the most probable place to allot to a canon agreeing with that of Theodulphus cited above;^c and which is found, though without any date attached to it, among the canons published in the Saxon era. But we return to regulations of Saxon origin.

Canon agreeing with that of Theodulphus.

The canons of Clovishoff were followed, at an interval of 140 years, by the laws of Alfred; which, in respect to the observance of holy seasons, are somewhat peculiar. They denounce a double penalty against any-one who should commit a theft upon the Lord's day, Christmas day, or Easter Sunday;^d and they concede to all freemen the following days: twelve at the sacred season of the Lord's birth; and the day when the Lord Jesus triumphed over the devil;^e and the day in com-

Laws of Alfred, A.D. 887, as to holidays;

theft thereon;

cessation from labour.

^a Prima dies seculi.—Spel. Con. i. 264, Const. 36. See page 89, for the quotation from Ignatius.

^b Vacantes.—Ib.

^b Ibid. p. 268, Cons. 104.

^c Page 96; Spel. Con. i. 545.

^d Ch. 7; Spel. Con. i. 367.

^e After the forty days' fast, as is presumed, though what particular day is meant we have been unable to discover.

moration of St. Gregory,^f and the days preceding and following Easter; and one day on the festival of the apostles Peter and Paul; and, in the month of August, a week before the festival of St. Mary;^g and one day at the Veneration of All Saints; and to all slaves, the four Wednesdays in the four Ember weeks, as days wherein they might work for any one whom they pleased, or who would employ them in the name of the Lord, or in his own service.”^h But we find no injunction to abstain from labour upon these days; and indeed in the case of the slaves, the lawgiver seems to contemplate their deriving benefit from their work.

Trading on the Lord's day, and working then, or on any feast, forbidden, A.D. 906, by the convention between Edward the Elder and Guthurn.

However no long time afterwards, in the treaty made between Edward the Elder and Guthurn the Dane, upon the basis of a negotiation commenced by Alfred, provision was made against trading upon the Lord's day, and working either on that or any other feast day. “The Dane,” it was declared, “who trades on the Lord's day shall forfeit the article, and pay a fine of twelve pence. The Englishman shall pay thirty shillings. The freeman who does any work on any feast day, shall be reduced to servitude or pay a fine, and the penalty of the violation of the law. The slave shall be beaten or purchase his deliverance. The Dane

^f March the 12th.

^g The Assumption, August the 15th.

^h Spel. Con. i. 374.

who compels his slave to work on any feast day against his will, shall pay the penalty of the breach of the law; the Englishman shall be fined.”¹ The regulations, it will be observed, are almost the same as those quoted above,—from the laws of Ina, and the canons of the Council of Berkhamstead. Whether those laws were still regarded as in force in the age of Alfred, and therefore the pious monarch looked upon the repetition of them as unnecessary; or whether that wise and good man was unwilling to enforce by law, the outward semblances of a reverence so deeply felt by himself, are questions which it is difficult to answer. At all events, if such were his feelings, they were not shared by those who came after him. The records of our history, from the days of Edward the Elder downwards, furnish us with abundant instances of laws made, sometimes by the ecclesiastical and sometimes by the civil authority, enjoining abstinence from work, either on the Lord’s day only, or also upon other seasons kept as holy by the Church.

Thus the laws of Athelstan contain a prohibition against trading on the Lord’s day,^k under the same penalty which they attach to legal proceedings on that day; namely, the loss of the article, and a fine for contempt of the royal authority. Fifteen years

Trading on the Lord’s day forbidden, A.D. 928, by the laws of Athelstan;

and secular works there-

¹ Ch. 10, 11; Spel. Con. i. 391.

^k Ne fiat aliquid negotiatio . . . die Dominicâ.—Spel. Con. i. 404. For the words of the penalty, see page 36.

on, or on the other feasts, forbidden, A.D. 943, by the constitutions of Odo;

and the keeping of the Lord's day enjoined, A.D. 967, by the laws of Edgar.

later, Odo, Archbishop of Canterbury, in his constitutions, enjoins his clergy "most carefully to guard the Lord's day, and the festivities of the saints, according to the canon, and the example of those who had gone before them, from all secular works."¹ The laws of Edgar command, that the "solemnity of the Lord's day shall be celebrated from the third hour of the afternoon of Saturday to the dawn of Monday, under the penalties mentioned in the book of the laws."^m And though the abstinence from labour or trading is not expressly mentioned, it can scarcely be doubted, that this was a mode of celebration intended to be included. At all events the canons made in the reign of this monarch

¹ C. 9; Spel. Con. i. 413.

As to the mode of reckoning the day.

^m C. 5; Spel. Con. i. 445, 446.—The time mentioned in this law appears to have been fixed in order to include the whole feast day, whether that was to be reckoned from vespers to vespers, or sunrise to sunrise. We find the same period in the laws of Canute. "*Diem Dominicum ab ipsa Saturni horâ pomeridianâ tertia in primam usque diei Lunaris lucem festum agitato.*"—Spel. Con. i. 546, l. 14. And in the laws of Edward the Confessor, the same rule is applied to a number of festivals there directed to be observed. (See page 38.) The canons of Berkhampstead content themselves with the time between sunset on the Saturday and sunrise on the Monday. (See page 103.) But even this exceeded the limits of the more generally received canon law, which was satisfied with the period from evening to evening. *Omnes dies Dominicos a vespere in vespere, cum omni veneratione decernimus observari, et ab omni illicito opere abstinere, ut in eis mercatum minime fiat, &c.*—X. 2, 9, 1; cf. De Cons. 3, 1.

admit of no uncertainty on the point. "We teach also," they say, "that on the Sunday every one should abstain from trading and public meetings."ⁿ

Trading and public meetings on the Lord's day forbidden by canons of the reign of Edgar; and by the Council of Enham, circa A.D. 1009;

With equal explicitness do the canons of the general English council of Enham under King Ethelred enjoin, "that every one shall observe the festivity of the Sunday, with the more fervour, as is its due, and on that sacred day shall carefully abstain from merchandizing and assemblies of the people, and mundane works."^o Other festivals are directed to be kept,^p but to none is an injunction attached similar to this in regard to the Lord's day. The council of Enham was followed, at an interval of about twenty-one years, by the laws of Canute, which sanction by their authority the rules of the canons last quoted: "utterly forbidding on the Lord's day the carrying on of trade, or the holding of popular assemblies (unless in a case of necessity); and commanding every one to abstain altogether on that sacred day from every earthly work."^q But the Danish conqueror went beyond the Saxon bishops. By another law we find him reviving the penalties attached by the laws of Ina, and the treaty between Edward the Elder and

and the laws of Canute, circa A.D. 1032.

Under severe penalties.

ⁿ C. 19; Spel. Con. i. 450.

^o C. 15; Spel. Con. i. 518.

^p Especially "Summum festum sanctæ Mariæ," which, "omnes cautius honorento."

^q L. 15; Spel. Con. i. 546.

Guthurn, to labour on the Lord's day; augmenting them in the case of a freeman by a fine sufficient to ransom him from the pillory, and by requiring him to "make satisfaction to God, as he should be commanded;" and extending them to all festival days.^r

While he extends the law as to the commission of crime on holidays.

At the same time he re-enacted, with some extension, the laws of Alfred, by which crime was more severely punished if committed in a holy season.

"Crime," he lays down, "is more criminal on saints' days; and the greater the rank of the criminal, the more severely to be punished."^s Therefore also, if any one "by fighting, marrying,^t plundering, or the perpetration of any other flagitious offence, shall violate a solemn festival, the compensation for his offence shall be doubled according to its nature; whoever will purge himself from a charge of such an offence, is required to bring threefold the usual number of purgers."^u With this

^r Spel. Con. i. 551; 2nd Collection of Canute's Laws, l. 14. Liber si festo die operis quicquam patrarit; ea quæ sunt loco colli obstricti (see page 103 ^u) multâ compensato. Deo autem prout ei fuerit impetratum facito satis. Servus si opus fecerit vapulato, aut pro facti ratione virgarum metum precio redimito. Herus si servo invito opus addixerit, die quocunque festo servo multator suo; servus liber esto. Herus præterea si in Dacis fuerit violatæ legis poenam dependito. Anglus pro facti ratione, aut multâ afficitor aut crimen purgato, i. e. purge himself from the charge.

^s L. 7; Spel. Con. i. 551.

^t As to which see infra.

^u Id. l. 16. The purgation consisted in bringing a number of

law closes the series, ecclesiastical and civil, of English legislation anterior to the Norman conquest, upon the subject of our present inquiry.

Under the Norman sovereigns, the authority of the ecclesiastical power reached, as is well known, its greatest height: and with its growth the number of days on which secular business was proscribed, and, in some degree, the effort to procure a strict observance of the prohibition, appears to have increased. For the first century after the Conquest, we do not indeed find any new laws on this subject. But the second is more fertile.

Early in its commencement we meet with a document, not, it is true, precisely coming under the category of a law, civil or ecclesiastical, but yet of a nature so curious, that it is here inserted. Its principal object is to awaken a greater reverence for the Lord's day. It professed to be "a mandate which fell from heaven, and was found on the altar of St. Simon, on Mount Golgotha in Jerusalem," and humbly taken by the patriarch, and the Archbishop Akarias, "after that for three days and nights the people, with their pastors, had lain prostrate on the ground, imploring the mercy of God." A copy of it was brought to England by Eustachius, Abbot of Flay; who, on his return

Celestial
mandate as
to the obser-
vance of the
Lord's day,
and other
festivals, A. D.
1201, John.

persons, varying under different circumstances, to assert their belief of the innocence of the accused party. See Bl. Com. iii. 344.

from the Holy Land, preached from city to city against the custom of buying and selling on the Sunday. It ran thus: "I the Lord, who commanded you to keep holy my day, and ye do not keep it, as I said in my Gospel, heaven and earth shall pass away, but my words shall not pass away. I have caused to be preached to you that ye should repent, and ye have not believed; and because ye do not keep holy the Lord's day, ye have had famine for a few days; but I speedily gave you abundance, and after that ye did worse. I will again, that, from the ninth hour of the Sabbath to sunrise on the Monday, no work shall be done, but that which is good. And if any has transgressed, let him repent, and amend. And if ye do not obey this command, verily, I say unto you, that I will not send you any other commands by another letter, but I will open the heavens, and instead of rain, I will pour down upon you stones, and wood, and hot water, by night; so that ye shall not be able to guard against it, but I will destroy all the wicked men. This I say unto you; ye shall die the death, on account of the holy day of the Lord, and of the other festivals of my saints, which ye do not keep. I will send upon you wild beasts to devour you," &c. "Hear my voice, lest ye perish from the earth, on account of the holy day of the Lord. Depart from evil, and repent you of your wickedness. But if ye will not repent, ye shall

perish like Sodom and Gomorrah. Now know, that ye are saved by the prayers of my most holy mother, Mary, and of my holy angels, who pray for you night and day; I have given you corn and wine in abundance, and ye have not obeyed me. For the widows and the orphans call out against you daily, to whom ye show no pity. The Pagans have compassion, but ye have not. I will make the trees which bear fruit to wither up, for your sins, and the fountains shall give no water. I gave you a law in Mount Sinai, which ye have not kept: I gave you a law, by Myself, which ye do not observe. For you I have been born, and ye know not the day of my festival.⁷ Ye wicked men! ye do not keep the day of my resurrection. I swear to you by my right hand, that unless ye keep the Lord's day, and the festivities of my saints, I will send upon you the Pagan nations to slay you. Yet ye take away the property of others, and ye have no respect for this. Therefore I will send upon you more fearful beasts, who shall devour the breasts of your women. I will curse those who do any evil on the Lord's day. I will curse those who act unjustly towards their brethren. I will curse those who judge unjustly the cause of the widow and the orphan, on the earth. But ye have left me; and ye follow the prince of this world. Hear

⁷ Referring probably to the doubt as to the time of Christ's birth, as to which see Bing. xx. 4, 1—4; and page 9.

my voice, and have compassion. But ye will not cease from your evil works, or from the works of the devil; for ye commit perjuries, and adulteries. Therefore shall the nations surround you; and wild beasts shall devour you." Moved by this mandate, and the exertions of the abbot, the people, we are told, made a vow not to sell anything on the Lord's day, unless meat and drink to travellers: and not to do any servile work on that day, or on saints' days; and to give one farthing out of the produce of every five pounds of articles sold, to procure lights for the churches, and for the burial of the poor. But the king, "instigated by the devil," had those persons who had thrown down the places where goods were sold on the Lord's days seized, and brought before his officers,² that

² Spel. Con. ii. 129; Hoveden, 821. And yet the sacredness of the day had been attested by extraordinary interpositions of divine power. At Beverley, a carpenter, who was making a peg, and a weaver who continued to work at his web after three o'clock on the Saturday, were severally struck with palsy. In Nasurta, a village belonging to one Roger Arundel, a man who had baked a cake in the ashes after the same hour, found it bleed when he tried to eat it on Sunday; and a miller who continued to work his mill was arrested by the blood which flowed from between the stones in such quantity as to prevent their working: while in some place, not named, in Lincolnshire, bread put by a woman into a hot oven after the forbidden hour, remained unbaked on the Monday; when another piece, which, by the advice of her husband, she put away in a cloth, because the ninth hour was past, she found baked on the morrow.

Message in
Henry II.'s

An account of a message similar in its object, but less formally attested, is given in the time of Henry II., whom a tall

they might be made to give satisfaction for enforcing the observance of the Lord's day.^a

If from this celestial message, we turn to the better authenticated proceedings of human law-makers, we meet with a spirit not very different from that embodied in their more assuming predecessor. A canon attributed to the council of Oxford, held early in the thirteenth century, while it enumerates the Lord's days among those on which all work is in general prohibited, does indeed make an exception analogous to that contained in the above cited law of Constantine, in favour of some of the labours of agriculture.^b But the canon is wanting in the English editions of the council;^c

Canon attributed to the council of Oxford, A.D. 1222, Henry III. allows some agricultural works on that day.

thin man, of a yellow colour, dressed in white, with a round tonsure, is said to have harangued on the Sunday after Easter day, commencing, "God holde ye, King," (Camd. Ang. Norman. 840); commanding him, in the name of Christ, and of his venerable mother, of St. John the Baptist, and of St. Peter, to prohibit any markets, or servile work, on the Lord's day, except in regard to articles of food; and promising him success in his undertakings as the reward of obedience, and evil tidings from thenceforth if he disobeyed. Within a year, adds the historian, the three sons of the king, Henry, Godfrey, and Richard, took part with the King of France against him; and the King of Scotland, and the Earls of Chester and Leicester, rose in arms.—Henry de Knyghton, ii. 2395, Twys.

^a Satisfacturi de observantiâ diei Dominici.

^b C. viii. Hæc sunt festa, in quibus prohibitis aliis operibus conceduntur opera agriculturæ et carrucarum.—Labbeo, xxii. 1147. Carruca may mean either a cart or a plough.

^c See note to it in Labbeo.

and does not agree well with the canons of the synods subsequently held, in different parts of the kingdom;^d it is therefore probably supposititious.

Cessation of labour on the Lord's day enjoined, A.D. 1240, Henry III. by the synod of Worcester.

Eighteen years after the council of Oxford, the synod of Worcester included the Lord's days among those which were to be kept holy entirely, distinguishing certain others, to be observed as holidays by all but carters or ploughmen.^e And some of the stories told of this century imply the existence of feelings, concerning the kind of reverence due to the Lord's day, resembling those which gave rise to the mandate produced by the Abbot Eustachius.

Feeling about it, shown by story of St. Richard of Cirencester, died A.D. 1253;

Thus, of St. Richard of Cirencester, who died in the middle of it,^f we are told, "That he was busy on a Sonnon day, befor none (nones, 3 o'clock), that he makud to schavon his berde, and one (once) on a Saturday afternone. And then was the fende (fiend) ready, and gathered up the heres. Bot, whan this holyman seghe that, he conjured the fende, and bade hym tellon why he did so. Than sayde the fende, 'For thu doste no reverens to the Sonday, that is God's owne day, to the whyche day vche (each) man that is chrystened is holden to do reverens in worchep of Cryste's resurrection: wherefore, this herus I wil kepe to the day of dome,

^d Spel. ii. 181; Wilkins, Con. i. 587.

^e *Ferianda omnibus præterquam in carrucis.*—Spel. ii. 259.

^f See the Letter from the Pope, A.D. 1262, ordaining his festival to be kept the 3rd of April.—Rymer, Fœd. i. 740.

in hyge reprove to the.' Than anone this man made to levon of his schavynge, and toke the herus of the fende, and made for to brennon (burn) them on hys owne head for penawnce, and so abode half schavon and half unwaschon tylle the Monday after."^g

The existence of the same kind of feeling is evidenced by a story told of Richard de Clare, Earl of Gloucester, by annalists, supposed to be of contemporary date, and which is to this effect. In the year 1260, a Jew of Tewkesbury fell into a sink on the Sabbath, and out of reverence for the day, would not suffer himself to be drawn out; the duke, out of reverence for the Sunday, would not permit him to be drawn out the next day, and between the two he died.^h The English laws are,

and that of
Richard de
Clare, Earl of
Gloucester,
and a Jew.
A.D. 1260.

^g Mirk's Sermon on Schere Thursday, i. e. the Thursday before Easter. Cott. MSS.; Hamp. ii. 351.

^h Leland, Collectanea, i. 173, 288 : 175, 245, of ed. London, 1774. The incident gave rise to an Epigram, preserved by Camden. Remains, Rythmes, 338, London, 1637.

"Tende manus, Salomon, ego te de stercore tollam ;

Sabbata nostra colo, de stercore surgere nolo.

Sabbata nostra quidem, Salomon, celebrabis ibidem."

Absurd as the anecdote may appear, it was paralleled in the year 1835, at Montelais, near Nantes, in France, where three men were buried 430 feet deep by the bursting of the shaft of a coal mine. One was extricated, but the work was interrupted by the arrival of the Sunday morning ; and by Monday, the others had perished. (Le Breton, July 30th, 1835 ; Hamp. ii. 367.) An anecdote resembling that related in the text of St. Richard, is told of St. Olaus, one of the first Christian kings of Sweden ; who, while intent on other matters, cut off little pieces

Incident in
France, in
1835.

Story of the
regard shown
by St. Olaus
to the Sun-
day ;

however, principally directed against the practice of trading on the Lord's day.

Synodal constitution, A.D. 1237, Henry III., against holding markets on the Lord's day.

Early in the 12th century, an anonymous synodal constitution charges the priests, "to prohibit their parishioners, under the threat of anathemas,¹ from frequenting markets on the Lord's days, neglecting the churches, which," the constitution continues, "they ought especially to frequent on those days, and to be intent on prayer, and the ecclesiastical services, and to hear the word of God, a thing they scarcely do any day in the week, except very rarely on great festivals;" wherefore, it goes on to ap-

and regulations of William, Bishop of Angers, A.D. 1292.

of wood from his stick on the Sunday, and when reminded that he had thus violated its sanctity, collected the chips, and burnt them on his hand.—(Cranz. Metrop. iv. 8, ap. Hosp. de Fest. 31.) And towards the close of the thirteenth century, William le Maire (major), Bishop of Angers, by a canon made in his third synod, commanded, "All and singular his rectors and curates to inhibit their parishioners, under the threat of the divine judgment, and the penalty of excommunication, from employing themselves in any servile work on festival days, and especially barbers from shaving beards, or otherwise exercising the office of barbers on the Sundays; and even from blood-letting, except when there is imminent peril of death or disease;" with a similar prohibition to the parishioners "against shaving themselves on Sundays, or receiving any barber-like office, on peril of their souls." Millers also he forbade to grind their corn, between vespers on Saturday and vespers on Sunday; nor would he allow the length of time that the contrary custom had lasted to sanction it; for "an abuse cannot grow into a use, and no prescription can avail against the precepts of the Decalogue."—D'Achery, Spicel. i. 735.

¹ Sub interminatione anathematis.—Spel. ii. 238.

point that a particular market should be held on a Monday.

Towards the end of that century, the synod of Exeter declared, "That the page, both of the old and of the new Testament, hath appointed the seventh day for the rest of man; whence the Jews, according to the letter, keep the Sabbath day; we, according to the spirit, keep the Lord's day free from manual works, that the Christian people assembling in the churches, may both hear the divine commands and learn the rule of life; and since their various secular employments do not allow the parishioners to attend the divine offices on other days, by so much the more is every one bound more carefully^k to be present on these days, that when they have laboured for the material bread which perisheth on six days, on the seventh they may be refreshed^l with the spiritual food which perisheth not,—the word of preaching. Therefore," continues the canon, "that the temptation to absence from the divine offices on the Lord's day may be taken away, we firmly prohibit, under the penalty of excommunication, the holding of markets, in our diocese, on the Lord's days, except for the sale of victuals, which on these, as on other days, may lawfully take place, after mass.^m Those who sell or buy other articles, or at another time, we decree

Canon of the synod of Exeter, A.D. 1287, Edward I., to the same effect.

^k Singuli curiosius tenentur adesse.

^l Salubrius refocillentur.

^m Missa tamen primitiis celebrata.

to be subject to a heavy penalty."ⁿ The practice thus denounced appears to have existed in other parts of the kingdom, besides the diocese of Exeter.

and a letter
of Archbishop
Islip, A.D.
1339, Edward
III., to the
Bishop of
London.

In the middle of the succeeding century, a letter, addressed by Simon Islip, Archbishop of Canterbury, to the Bishop of London, complains of "the perverse, nay, undoubtedly damnable abomination, of long usage, in different parts of his province;" namely, the holding markets on the Lord's day, everywhere and without distinction, to the contempt of the honour of God, for the sale of divers articles, among which victuals were not even to be found, but other transactions were carried on, such as generally involve fraud, and the danger of deception." To these and other evils enumerated in the letter, as, unlawful conventicles, desertion of the churches, and quarrels thence ensuing, the clergy are exhorted to oppose themselves by ecclesiastical censures.^p A constitution of the same prelate, published three years later, enjoins abstinence from all secular works,^q even though useful to the state, on the sacred day of the Lord, beginning from vespers on the Saturday. This constitution was a repetition of one published thirty years earlier, by his

Constitution
of the same
prelate,
against se-
cular works
on the Lord's
day, A.D.
1302.

First pub-
lished by
Archbishop
Mepham,
A.D. 1332.

ⁿ Canon 22; Spel. ii. 372.

^o In nonnullis provinciæ nostræ partibus perversa detestatio, immo certe damnabilis inolevit.

^p Spel. Con. ii. 599.

^q Popularium operibus.—Spel. Con. ii. 609.

predecessor in the see of Canterbury, Archbishop Mepham.^r

Nor was the custom thus complained of confined to the province of Canterbury. Four years later than the publication of Islip's constitution, Thoresby, Archbishop of York, found occasion to forbid the holding markets in the churches or church-yards, on Sundays and saints' days;^s a direction republished by Archbishop Warham 150 years later.^t And in the beginning of the fifteenth century, a prohibition generally against holding markets on any Sundays or festivals, emanated from Archbishop Arundel, with an exception, however, in favour of the Sundays in time of harvest, according to the custom of the country, when, for the convenience of the labourers occupied during the rest of the week in getting in the fruits, he allowed them to be held, provided booths were not erected in the church-yards.^u Not many years after this regulation, Archbishop Chichele, in his desire to check a practice, which we have seen strongly denounced in the thirteenth century,—the practice, namely, of barbers exercising their vocation on the mornings of the Lord's day—fell into the curious error of confusing that day with "the seventh day which the Lord blessed, which he sanctified, and in which, after the works of the six days, he rested

The holding markets round the churches, on Sundays, &c., forbidden, A.D. 1387, by Archbishop Thoresby;

and Archbishop Warham, A.D. 1518; and the holding them at those times, by Archbishop Arundel, A.D. 1401, Henry IV.

A.D. 1414, Henry V., Archbishop Chichele denounces the keeping barbers and other shops open on the Lord's day.

^r Spel. Con. ii. 501.

^s 3 Wilk. 68.

^t 3 Wilk. 668.

^u 3 Wilk. 266.

from his work.”^x The keeping shops at all open on that day, the archbishop forbids under penalty of the greater excommunication;^y thereby, as he declares, repeating a provincial constitution of his predecessor, Thomas of Arundel.^z

Act of parliament, A.D. 1354, Edward III. forbids the exposition of wool on Feast days;

But long before this period, and in fact eight years earlier than the above cited constitution of Archbishop Islip, the legislature had interfered for the prevention of secular business on holy seasons, so far, at least, as impliedly to forbid the exposition of wool for sale on the Lord's day and other great festivals, in the staple towns; that is to say, the towns fixed by a previous statute as the great marts

Another act, A.D. 1437, forbids wages to be claimed for Vigils and Feast days.

for the wool trade.^a In the early part of the succeeding century another act, by ordaining that a labourer engaged by the week, shall “take nothing for the festival days in such week, or the half days of the evens of such festivals,”^b endeavoured to remove the inducement to labouring at those seasons.

^x 3 Wilk. Con. M. B. 368; his words are, “die dominico, videlicet, die septimo, &c.”

^y See page 96 *.

A.D. 1503.

^z In the reign of Henry VII., Archbishop Wareham presented certain barbers and butchers to the Ecclesiastical Court, for exercising their vocations on the Lord's day, and they were admonished to forbear, on pain of ecclesiastical censures.—Gibson, Cod. 238, 2d ed.

^a 28 Edw. III. c. 14. Item accorde est et etabli que montreson de laines soit faite a l'estable chescun jour de la simeigne, fort pris le Dimange, et les solemnes festes del an. As to the staple towns, see 29 Edw. III. st. 2, c. 2.

^b 6 Hen. VI. c. 3, see page 134.

And twenty years afterwards, the customs complained of by Islip, nearly a century before, received a further check by an act expressly directed against them. "Item," says this law,^c "considering the abominable injuries and offences done to Almighty God, and to His Saints, always aiders and assisters in our necessities, because of the fairs and markets upon their high and principal feasts, as in the feast of the Ascension of the Lord, in the feast of Corpus Christi, in the day of Whitsunday, in Trinity Sunday, with other Sundays, and also in the high feast of the Assumption of our Blessed Lady, the day of All Saints and on Good Friday, accustomably and miserably holden and used in the realm of England; in which principal and festival days, for great earthly covetise, the people is more willingly vexed, and in bodily labour foiled, than in other ferial (i. e. week)^d days; as in fastening and making their booths and stalls, bearing and carrying, lifting and placing their wares outward and homeward, as though they did nothing remember the horrible defilement of their souls, in buying and selling, with many deceitful lies, and false perjury, with drunkenness and strife, and so withdrawing themselves and their servants from the divine service: the aforesaid Lord the King, by the advice and assents of the Lords spiritual and temporal, and the

and act, A. D.
1448, Hen.
VI. against
holding fairs
or markets on
them.

^c 27 Hen. VI. c. 5.

^d Ducange, Gloss, Feriæ.

Commons of England in Parliament assembled, and by authority of the said Parliament, hath ordained, That all manner of fairs and markets on the said principal feasts and Sundays, and Good Friday, shall clearly cease from all showing of goods or merchandises (necessary victual only excepted), upon pain of forfeiture of all goods so showed, to the lord of the franchise or liberty, where such goods, contrary to this ordinance, be or shall be showed (the four Sundays in harvest except).” The act goes on to provide, that those who had no right to hold their fairs or markets, upon any days but the festivals before enumerated, should be allowed them on any one of three days, next before or after the said feasts.^d

Law against
selling shoes
on the Lord's
day and Saints
days, A.D.
1464, Edward
IV.

To the general prohibitions contained in this act, the seventh chapter of the 4th of Edward IV., added a special one to “cobblers and cordwainers in the city of London, or within three miles^e thereof,” excepting however the precincts of St. Martins-le-Grand and of the palace at Westminster. All such persons were forbidden, “on any Sunday

^d 27 Hen. VI. c. 5. The petition of the Commons, upon which this act was passed, expressly refers to the message sent by “Our Lord Crist, his myld Moder, Seynt John the Baptist, and Seint Petir, by an Aungell in mannes likenesse, to king Henry II. at Cardyf, the Sondag next after Easter day” (see page 115²); and which the petition says is “writ in the Chronicle of Policronicon, Book vii. c. 22.”—Rot. Parl. v. 152; 27 Hen. VI.

^e Trois leagues.

in the year, or on the feasts of the Nativity or Ascension of our Lord, or on the feast of Corpus Christi, to command, or cause to be sold, or place or put on any one's feet or legs, any shoes, hose, or galloshes,"^f under the penalty of the forfeiture of the article, and a fine of 20s. for every offence; a third part to go to the king, a third to the governors of the mystery (mestier) of cordwainers, and the residue to the informer. The act was however repealed in the reign of Henry the Eighth, "that the king's subjects may hereafter be at their liberty, as well as the inhabitants within the limits of St. Martins-le-Grand."^g

Repealed
A. D. 1523.
Hen. VIII.

But although a more complete abstinence from work upon the Lord's day was sought to be attained by these laws, the clergy of that age, notwithstanding the example of Archbishop Chichele, follow the steps of their predecessors, in warning their flocks against confusing the Christian with the Jewish festival. Thus Archbishop Islip, in his mandate before mentioned,^h gives a caution not to meet before the hour of vespers on the Sabbath, "lest we should seem to partake in the Jewish profession." So the synod of York, held under Archbishop Neville two years subsequently to the date of the last cited law, in an exposition of the Decalogue, published by it as a

Caution
against con-
fusing the
Jewish and
Christian
festival, by
Archbishop
Islip;

and in the
synod of
York, held
A.D. 1466.

^f Solers, hosers, ou galoges.

^g 14 & 15 Hen. VIII. c. 9.

^h Page 120

guide to the clergy in their addresses to the people, tells them of the third (our fourth) commandment, "when it is said, remember to keep holy the Sabbath day, the observance of the Christian worship is enjoined, which is of obligation alike on the clergy and laity. Where it is to be known, that the obligation to keep holiday on the legal Sabbath, according to the form of the Old Testament, wholly expired, with the other ceremonies of the law. And under the New Testament it is sufficient to keep holiday for the divine worship on the Lord's days, and the other solemn days ordained to be kept as holidays, by the authority of the Church; wherein the manner of keeping holiday is to be taken, not from the Jewish superstition, but from the directions of the canons."ⁱ In fact, the importance attached by the Church to the abstinence from work on other days besides the Lord's days, would go far to counteract any tendency to a Jewish observance of the latter. If men abstained from work when and because the Church commanded them, it was natural for them to limit the degree of their abstinence to that with which the Church was satisfied. That in fact the cessation from labour enjoined by the Church was not limited to the Lord's days, the authorities already cited would sufficiently prove; but in order not to interrupt the narrative of the laws relating to the observance of those

ⁱ Spel. ii. 702.

days, several relating especially to the other feast days have been omitted, and to these we must now turn our attention.

The first regulation which meets us after the Conquest, is a canon of the synod of Worcester, held in the time of Bishop Walter de Cantilupe. It enumerates three classes of festivals; the first to be kept as complete holidays;^k including the feasts of

Canon of the
synod of
Worcester,
A. D. 1240,
containing a
list of total
holidays;

Christmas and the four following days.

The Circumcision.

The Epiphany.

The Deposition of St. Wulfstan.

The Conversion of St. Paul.

The Purification of the Blessed Mary.

The Chair of St. Peter.

St. Mathias the Apostle.

The Deposition of St. Oswald.

The Annunciation.

Easter day and the two next following.

St. Mark the Evangelist.

St. Philip and St. James the Apostles.

The Finding of the Holy Cross.

Ascension day.

The day of Pentecost and the two next following.

The Nativity of St. John the Baptist.

St. Peter and St. Paul the Apostles.

The Translation of St. Thomas the Archbishop.

^k Ferianda ex toto.

St. Mary Magdalene.
 St. James the Apostle.
 St. Peter ad Vincula.
 St. Lawrence the Martyr.
 The Assumption of St. Mary.
 St. Bartholomew the Apostle.
 The Nativity of the Blessed Mary.
 The Exaltation of the Holy Cross.
 St. Matthew the Apostle.
 St. Michael the Archangel.
 St. Luke the Evangelist.
 St. Simon and St. Jude the Apostles.
 All Saints.
 St. Martin the Bishop.
 St. Andrew the Apostle.
 St. Nicholas the Bishop.
 St. Thomas the Apostle.

All Sundays—The festival of the saint to whom the church was consecrated, and—The day of its dedication; if the church be a mother church, throughout the whole parish; if only a chapel, then in the district belonging to it.

a list of partial holidays;

To this list is added a second, of days to be kept as holidays in every respect except ploughing, and the use of carts,¹ which contains the names of

St. Vincent, Martyr.

St. John, ante Portam Latinam.

¹ Ferianda in omnibus præterquam in carrucis. See page 116 e.

St. Barnabas, Apostle.

St. Leonard, Abbot.

St. Clement, Pope and Martyr.

The Translation of St. Oswald, Bishop.

St. Catharine, Virgin and Martyr.

A third list enjoins an abstinence from female works, on the days of and a list of holidays for women.

St. Agnes, Virgin and Martyr.

St. Margaret, Virgin.

St. Lucia, Virgin.

St. Agatha, Virgin and Martyr.

The canon concludes by enjoining the celebration of the days of St. Dominic, St. Francis, and St. Edmund the Confessor, by the full service of nine lessons; but expressly repudiates the intention, in consequence, of "preventing the labours of the faithful."^m

Still more indulgent to "agricultural labours, without which the earth cannot be cultivated," did Ægidius, Bishop of Salisbury, show himself, in a constitution published by him towards the middle of the same century, in which, "without derogating from the reverence due to the saints,"ⁿ he appoints, that, "except on the solemn festivals of the Nativity and the four following days, of the Circumcision, Epiphany, Resurrection, and Ascension, the day of Pentecost and the three following days; all the Lord's days, and those

Constitution of Ægidius, A.D. 1256, fixing the holidays to be kept in Salisbury diocese.

^m Spel. Con. ii. 259.

ⁿ Salva sanctorum reverentiâ.

of the glorious Virgin, and of the Apostles and Evangelists, and of the Holy Cross; and the feasts of St. Michael, St. John the Baptist, St. Lawrence, the Translation of St. Thomas, St. Martin, St. Mary Magdalene, St. Catharine; The day of the dedication of the parish church in each parish, and The feast of the saint to whom it was dedicated; no other feast day should be enjoined upon the people to be kept by a cessation from work.”^o

Canon of the
synod of
Exeter,
A.D. 1287,
Edward I.
Differences
between it
and that of
the synod of
Worcester.

The before-mentioned synod of Exeter,^p held during the bishopric of Peter Quivil, towards the close of the century, is stricter in its requirements. To the days included in the first list given by the canon of the synod of Worcester above cited, it adds, as days solemnly to be observed by the clergy and people,^q the feasts of

St. Gregory.

St. George.

St. Augustine.

St. Barnabas.

St. Catharine.

The Beheading of John the Baptist.

The Conception of the Blessed Mary.

St. John, ante Portam Latinam.

Three of these feasts, it will be remembered, were placed by the canon of Worcester in its second list.

^o Spel. Con. ii. 302.

^p See page 119.

^q It appears by the previous part of the canon, quoted at page 48, that on the feasts enjoined to be thus kept labour was suspended.

The synod of Exeter required, further, a cessation of labour during eight days at Christmas, and at Easter, and four at Whitsuntide. On the other hand, the feasts of St. Wulfstan and St. Oswald are omitted; and of the other days mentioned in the second and third lists of the synod of Worcester we hear nothing.^r

^r Spel. Con. ii. 372. Among the canons attributed to the council of Oxford is one (see Labbeo, xxii. 1147, c. 8), which, for the reasons already given (see page 116), cannot be considered as of authority, but may nevertheless serve as evidence of the days, regarded with peculiar respect, if not universally included among those on which labour was suspended in England, in the thirteenth century. It gives three lists; the first, of "feasts wherein other works being prohibited, those of agriculture, and of carters or ploughmen (*carucarum*), are permitted," viz.

Canon attributed to the council of Oxford containing lists of days to be kept holy.

All Sundays.

Five days at Christmas.

The Epiphany.

All the feasts of the Blessed Mary, except the Conception.

The Conversion of St. Paul.

The feast of the Chair of St. Peter.

All the feasts of the Apostles.

The feast of St. Gregory.

Good Friday.

The Monday, Tuesday, and Wednesday in Easter week.

Ascension day.

The Monday, Tuesday, and Wednesday in Whitsun week.

The feast of St. Augustine.

The two feasts of the Cross.

The feast of the Translation of St. Thomas.

Both feasts of St. John the Baptist.

The feast of St. Margaret.

The feast of St. Mary Magdalene.

Hitherto we have had regulations of force in one diocese only; the fourteenth century brings us

The feast of St. Peter ad Vincula.

The feast of St. Lawrence.

The feast of St. Michael.

The feast of St. Edmund the Confessor.

The feast of St. Edmund, King and Martyr.

The feast of St. Catharine.

The feast of St. Clement.

The feast of St. Nicholas.

The day of the dedication of the church of each parish, and
Any feast of the saint to whom it was dedicated.

The second list is of certain days "to be devoutly kept by the rectors and chaplains of churches in the divine worship and praise, and on which the less important servile works, according to the custom of the place, are interdicted." These are the feasts of

St. Fabian and Sebastian.

St. Agnes.

St. Vincent.

St. Blasius.

St. Agatha.

St. Felix.

St. George.

St. John, ante Portam Latinam.

St. Dunstan.

St. Alban.

† The finding of the Holy Cross.

St. Jerome.

St. Fides.

† The Dedication of St. Michael in Monte Tumba.

St. Dionysius.

All Souls.

St. Cecilia.

St. Lucia.

St. Leonard.

In this list, however, the two against which the † is placed, are

to some of more extensive operation. And first to a regulation of the council of London, which we introduce here, though relating not to a feast, but to a fast day, because the small number of such laws in respect to fasts, scarcely allows the collection of them under a separate head. On Good Friday, the council enjoins that none be intent on servile works or engaged in occupations alien to the practices of piety.* Nevertheless the council "does not impose this as a law on the poor, nor prohibit the rich from furnishing them as a work of charity with such things as are wanted for carrying on the labours of agriculture."

Canon of the council of London, A.D. 1324, discouraging working on Good Friday.

Not many years after the date of this canon, we meet with a mandate of the same archbishop who presided at this council, Mepham, and which thirty years later was republished by his successor, Archbishop Islip. Its object appears to be to guard against the abuse, to prescribe the due observance, and explain the grounds of the institution of festivals. We have had occasion before† to refer to clearly inserted by mistake, since they are both included in the first list.

Mandate of Archbishop Mepham, A.D. 1332, republished by Archbishop Islip, A.D. 1365, for the due observance of holidays.

The third list is of days in which "rural labours are permitted after mass, but not before," and consists of

The Octave of the Epiphany.

The feast of St. John and St. Paul.

The feast of the Translation of St. Benedict.

The feast of St. Martin.

* A pietatis cultus aliena.—Spel. Con. ii. 494.

† Page 120.

States the grounds for their observance.

this document; it commences by stating "that from the beginning of the human race, the Author of all things appointed, that, at the least on the seventh day, there should be a cessation from labour; but in the succeeding time of grace, the Church militant added many days, to be kept as holidays by all Catholics; of which afterwards custom, with the toleration of the Church, and on account of the supposed necessity of working, withdrew some, while it added, in the various parts of the Catholic world, others of local observance."

Complains of their abuse;

The mandate goes on to complain of the abuse of these holy seasons, "when, upon the very festival days, more thought was given to the tavern than the church; banquetings and drunkenness abounded, rather than tears and prayers; and men were intent on their lusts, or busied in brawls, instead of employing their leisure in contemplation: while the workmen, without whose labours the state could not exist, under the colour of conforming to what was required, abstained from work on days which they had constituted feasts of their own authority, and on the vigils of the saints' days; and yet demanded wages for the whole week, to the great injury of the commonwealth; nor did they keep Sabbath, as they ought to do, to the honour of God; but on such days scandalized God and his holy Church by the worst abominations, as if these solemnities had been gratuitously appointed

of the workmen making holidays for themselves;

for the encouragement of profaneness and perversity." The archbishop then gives a list of the days to be observed by a cessation of labour, agreeing nearly with the first list given by the above cited canon of the synod of Worcester. It differs in omitting the festivals of—

The Deposition of St. Wulfstan,
The Conversion of St. Paul,
The Chair of St. Peter,
The Deposition of St. Oswald,
St. Peter ad Vincula, and
St. Martin ;

while it adds that of the Conception of the Virgin, and, on its re-publication by Archbishop Islip, that of Corpus Christi. It requires also the observance of three days instead of two, after Easter day and Whitsunday ; and "such other feasts as shall be specially appointed by the bishops in their several dioceses to be therein observed."

The four days at Christmas are specified in this list as the feasts of—

St. Stephen,
St. John the Apostle and Evangelist,
The Holy Innocents, and
St. Thomas the Martyr.

The archbishop exhorts his brethren and suffragans to admonish their clergy and people "duly to observe the above festivals ; and if any hired workmen were to be found who should presume to

gives a list of the days to be kept as holidays ;

enjoins their observance ;

and the taking measures to prevent

the workmen
from making
holidays.

cease from their accustomed labours on feast days of their own, and not on the days appointed, and who thus should defraud those to whose service they had bound themselves, they should be restrained, and others compelled to restrain them from such superstitious practices, by ecclesiastical censures.”^b

Bull by
Innocent VI.
A.D. 1354,
Edward III.,
appointing
the feast of
St. Augustine
to be kept in
England.

The omission in the list of feasts given by Archbishop Islip, of all mention of that of St. Augustine, is remarkable, because a bull of Innocent the Sixth, of eight years’ earlier date, addressed to the Archbishops of Canterbury and York, had enjoined the observance of that day in England, as a double festival, and “the cessation from mechanical and such other works as, according to the custom of the churches of those parts, were forbidden upon such festivals.”^c

Bull by Pope
Gregory XI.
A.D. 1376,
Edward III.,
and letter
from the
Archbishop
of Canterbury
to the same
effect.

Fourteen years later, in consequence of a similar bull from Gregory the Eleventh, Simon of Sudbury, the then Archbishop of Canterbury, issued a letter to his suffragans and clergy, enjoining the observance of the day by a double service, but without saying any thing about the cessation from labour.^d

As to this day
being kept by
a cessation
from labour.

We have seen that this festival, though omitted in the canons of Wor-

^b Spel. Con. ii. 609. For an act directed against the demand of wages upon vigils and saints’ days, see page 122. The feast of the Conception was enjoined by the Council of London, A.D. 1328.—Spel. Con. ii. 494.

^c Spel. Con. ii. 599.

^d Spel. Con. ii. 620.

cester, was included among those directed to be observed, by a cessation from work, in the canons of the synod of Exeter; and it finds a place in a list of days to be kept free from all labour, published at the end of the century by Archbishop Arundel, together with the feasts, additional to those enumerated by Archbishops Mepham and Islip, of St. Cedde, St. Gregory, St. Anne, All Souls, St. Catharine, and St. Winifred. On the other hand, the feast of Corpus Christi is omitted.^e Nor is any mention made of the Lord's days.

Archbishop
Arundel's list
of feasts, A.D.
1400.

One other day of those placed in the second list by the Oxford canon, was raised in the succeeding age to a place among the more strictly kept holidays. The constitution of Archbishop Chichele before referred to,^f among its injunctions in honour of the feast of St. George, directs an abstinence therein from all servile works.

Constitution
of Archbishop
Chichele, A.D.
1476, ordering
a cessation
from
labour on St.
George's day.

^e Spel. Con. ii. 659. That the days newly mentioned in this constitution were not very strictly kept may however be inferred from a constitution of Archbishop Chichele of fifteen years' later date, by which St. Cedde and St. Winifred's days are only required to be observed by a fuller service. See Spel. Con. ii. 636.

^f See page 81.

CHAPTER IV.

OF THE GROUNDS UPON WHICH CERTAIN DAYS
FORMERLY KEPT HOLY IN ENGLAND WERE OB-
SERVED.

Feasts of the Chair of St. Peter—Invention of the Cross—Corpus Christi—St. Lawrence—Exaltation of the Cross—St. Nicholas—St. Martin—St. Mary Magdalene—St. Wulfstan—Translation of St. Thomas—St. Oswald^a—St. Vincent—St. John, ante P. L.—St. Leonard—St. Clement—Translation of St. Oswald—St. Catharine—St. Agnes—St. Marguret—St. Lucia—St. Agatha—St. Gregory—St. George—St. Augustine—St. Edmund Confessor—St. Edmund, King and Martyr—St. Fabian—St. Sebastian—St. Blasius—St. Felix—St. Alban—St. Jerome—St. Fides—St. Dionysius—St. Cecilia—Translation of St. Benedict—St. John and St. Paul—St. Cedde—St. Winifred—St. Anne.

WITH the law mentioned at the conclusion of our last chapter, the series of regulations, which we have been so long occupied in tracing, terminates, until the next century ushers in the legislation of the Reformation. But before we enter upon the laws of that period, it may be desirable, for the sake of such readers as may not be familiar with the histories of the saints, to interpose, as we have done in other instances, a brief narrative of the grounds on which those, whose names have come before us in the above lists for the first time, were specially honoured; and a statement of the days

^a See the Addenda for the account of St. Oswald.

consecrated to their memory; and in doing this it is purposed to take first such feasts as were of universal celebration; and then to notice such as were of local observance alone.

The festival of the Chair of St. Peter, the first of those mentioned in the above cited canons of which it seems expedient to take notice, was instituted in commemoration of the entrance of that Apostle upon his bishopric over the church at Antioch, where he is said to have presided seven years; and of a miraculous cure wrought by him upon the son of one Theophilus, the governor of the city; which led to the establishment of the Church there.^a Its institution is attributed, besides the desire of doing due honour to St. Peter, to the wish of checking a custom, prevalent among the Greeks and Romans, of making offerings of food, on the day appointed for its celebration, the 22nd of February, at the tombs of their ancestors: a custom not altogether suppressed, notwithstanding the introduction of this festival, in the sixth century;^b and whence the festival acquired the name of the feast of the blessed Peter of the Banquets.^c

Origin of the festival of the Chair of St. Peter, kept February 22.

why called the feast B. Petri Epularum.

^a Petrus de Natal. iii. 140.

^b The second synod of Tours, held A.D. 570, directed a canon against it, c. 34.

^c Festum B. Petri Epularum; Durandus, vii. 8, Bede, Martyr. That this festival, not that kept on the 18th of January in memory of the accession of St. Peter to the see of Rome, is the one intended in the English lists, seems pretty clear from the

Origin of the
feast of the
Holy Cross,
kept May 3.

The order of our list brings us next,—passing over certain days, of which, for reasons assigned below, we shall say nothing,—to the festival, commemorative of the finding of the Holy Cross, on the third of May, by the Empress Helena, the mother of Constantine the Great;^d either in the 305th, 307th, 325th, or 326th years of our era.^e Its recognition from the other two crosses, said to have been discovered with it, was effected, according to some accounts, by the restoration to life of a dead man when placed upon it;^d according to others the title still remained, and afforded sufficient evidence.^e The account of the miraculous multiplication of the wood seems to have gained belief not long after the discovery.^f

Of the feast
of Corpus
Christi, instituted A. D.
1264.

From the last mentioned feast, we pass to the movable festival of Corpus Christi, of which, since it must fall between the 21st of May, and the 24th of June, the present seems the proper

express enumeration of this feast, among those which were to be kept in February, by the Exeter list of festivals; as well as from the omission of any mention of the festival on the 18th of January in Bede's Martyrology; in the rationale or explanation of the divine services, of Belethus, a learned theologian, who wrote in the end of the twelfth, or in the similar work of Durandus, Bishop of Mende, who wrote in the middle of the thirteenth century; though they both mention the February festival.—Beleth. c. 83; Durandus, u. s.

^d Bede, Scr. Var. vii. 497; Martyr. Rom.

^e Hospinianus d. F. C. 81—84.

^f Martyr. Rom.

place to make mention. It was instituted by Urban the Seventh, in commemoration of the Holy Sacrament, for the strengthening and exalting the Catholic faith," and was ordered to be kept on the Thursday after the octave of Pentecost; the time when the Holy Spirit first taught the Apostles and their converts to appreciate the mysteries of that sacrament.^g The occasion of its institution is ascribed by Urban, in the bull instituting it, to "divine revelations made to some catholics, and known to him while he was appointed to an inferior office," than the Roman see. Subsequent writers, among whom is Petrus cited above, refer its institution to the miracle of Bolsena,^h which the pencil of Raphael has illustrated.ⁱ The devout attendance upon its ceremonies was rewarded by Urban with indulgences, of a hundred days for attendance at each of the three principal, and forty for attendance on each of the five minor, services.^k

Indulgences
for attendance
at its services.

^g Petrus de Nat. v. 45, citing Acts, ii. 42 : "And the people continued in the Apostles' doctrine and fellowship, and in breaking of bread, and in prayers."

^h Where a priest, who doubted the reality of the change in the elements of the bread and wine, found the napkin, in which the bread had been wrapped, bloody.

ⁱ The celebrated Thomas Aquinas petitioned for its institution ; and composed a service in prose and verse to be used on the occasion of it ; for which Urban rewarded him by a present of a silver dove. Hence Thomas is sometimes drawn with a dove on his shoulder, and the cup in his hands.—Hosp. de F. C. 88.

^k i. e. Matins, mass, vespers, prime, tierce, sexts, nones, and

Pomp displayed in the observation of it.

His successor, Clement the Fifth, enjoined its observance in the council of Vienna fifty years afterwards. In later times it was celebrated with great pomp. At Rome, according to the ceremonial described in the time of Leo the Tenth, the consecrated wafer was carried on the back of a white horse, decked with gay trappings, and bells: over it was borne a canopy; while before it moved attendants bearing torches and silver lamps: and there is a curious account, though too long for insertion here, of the procession in honour of this festival, witnessed at Valladolid by Lord Howard of Nottingham, when ambassador to Spain from James the First.¹

The seven hours.

St. Lawrence, whose festival next claims our

complins. These hours are to be traced back to very early times. The Apostolic Constitutions, viii. 54, enumerate the morning, the third, sixth, and ninth hours, vespers and cockcrow, as the times for prayer. And numerous passages are to be found in the Fathers, showing that they were observed by the more zealous even of the laity.—Van Espen, ii. 638. The grounds of the sevenfold observance are stated in the following verses.

Matutina ligat Christum, qui crimina purgat;

Prima replet sputis; causam dat Tertia mortis;

Sexta cruci nectit; latus ejus Nona bipertit;

Vespera deponit; tumulto Completa reponit.—Ib.

Matins, it must however be remembered, are properly a night service, and the sevenfold daily services were made up by lauds at daybreak, which, when the matins are said by day, are joined with them.

¹ See Hosp. d. F. C. 88, 89, 91, 95; Mercurius Gallo-Belgicus, for 1605, 26—31.

attention, was a Spanish soldier, ordained in the third century, by Sixtus the Second, the then bishop of Rome, of which church St. Lawrence became archdeacon. He was imprisoned, scourged, scorched with red-hot plates, and at last broiled on a gridiron, by order of the Emperor Valerianus, for refusing to give up the treasures of the church committed to his care.^m The flames, he is reported to have said, cooled rather than heated him.ⁿ Many miracles are ascribed to the gridiron on which he suffered, and to his remains.^m His death was commemorated on the 10th of August.

Origin of the feast of St. Lawrence, kept August 10th.

His sufferings.

The next month brought round the feast of the Exaltation of the Holy Cross, as distinguished from its discovery, with which it appears to have been sometimes confounded. It was instituted in the seventh century, to commemorate the recovery of the true cross, by the Emperor Heraclius, from Chosroes the Persian, who had carried it away from Jerusalem. Of its restoration to Jerusalem the following legend is narrated. The emperor, attired in his royal robes, bore it upon his back along the road where it had once been carried by the Saviour; but when he came to the gate leading to Mount Calvary, an insuperable resistance checked his progress. The emperor and his attendants stopped in mute amazement; but Zacharias, the

Origin of the feast of the Exaltation of the Cross, A. D. 630, kept the 14th September.

Legend of the Emperor Heraclius.

^m Martyr. Rom.

ⁿ Hosp. d. F. C. 127; Durandus, vii. 23.

bishop of Jerusalem, better divined the cause. "Consider," he said, "O emperor, whether that triumphal ornament, in one who bears the cross, is accordant with the humility and poverty of Christ." Heraclius, struck by his words, threw off his robes, and with bared feet, and clad in a plebeian garment, found no difficulty in carrying the cross to the church on Mount Calvary, whence it had been taken by the Persians.^o The feast was kept on the 14th of September.

Origin of the
feast of St.
Nicholas, kept
on the 14th
of December.

From this festival, commemorative of an incident connected with the history of our Lord, we proceed to one intended to keep alive the recollection of his servant St. Nicholas; celebrated on the sixth of December. He was a native of Lycia, and was chosen Archbishop of Myra in that country, towards the beginning of the fourth century (or in the end of the third^p). From his very babyhood, his pious, though wealthy parents, were assured that their prayers on his behalf were answered, by the wonderful abstinence of the child, who on Wednesdays and Fridays contented himself with one suck only. His charity was manifested when, having attained riper years, he divided his fortune among three virgins of noble family, whom poverty was in danger of driving into a vicious life; while the method which he adopted of bestowing his gift without being dis-

Legends of
his abstinence.

Charity and
humility.

^o Breviarium Romanum.

^p Martyr. Rom. Hosp. d. F. C. 153.

covered, by throwing each dower in a bag, by night, into the windows of the house where the young ladies resided, bore witness to his humility ; though the watchful father at last contrived to discover his benefactor. Miracles were not wanting, either during his life or after his decease, to approve his exalted claims.[¶] From his tomb a miraculous oil was reported to distil, as Baronius tells us even in his days.[†] The assistance supposed to have been afforded by him to some mariners of the neighbouring country of Cilicia, who invoked his aid during a storm,[¶] led to his being frequently prayed to by voyagers : and the story of his liberality produced a custom in some places, of leaving gifts for children, on the eve of his day, in their rooms, while they were asleep, which were called presents from St. Nicholas and his clerks.[¶]

The feast of St. Martin, the last remaining on our list, ought, in the order of the calendar, to have been mentioned before St. Nicholas. His day was kept on the 11th of November, and was wont to be marked by feasts, in which geese and new wine held prominent places ; a custom believed to have been transferred to this day, from the ancient festival of the vintage.[¶] The saint was born of noble

Miraculous
oil.
A. D. 1539—
1607.
Why invoked
by voyagers.

Whence St.
Nicholas's
presents.

Origin of the
feast of St.
Martin, kept
the 11th of
November.

Why geese
and new wine
on his feast.

¶ Breviarium Rom.

† Martyr. Rom.

¶ Hosp. d. F. C. 153.

¶ Kept in October. Hosp. d. F. C. 146.

His death between A. D. 404 and 410.

Story of his cloak.

Why he was called equal to the Apostles.

parentage in Pannonia, and served for some time in the Roman armies: but afterwards became bishop of Tours, a see which he held thirty-six years, till his death. The story of his cutting his military cloak into two parts, with his sword, that he might give half to a poor man, to whom he had nothing else to give, is well known, but less so, perhaps, that of the vision which he is said to have seen the following night, of our Lord Jesus Christ standing clad in this very cloak, and saying to the surrounding angels, "Martin, yet a catechumen," has clad me in this robe.^x" Of the many miracles narrated in connexion with his history,^y one seems worth mentioning, because it is that in respect of which, according to the testimony both of Durandus and Beletus, he was called equal to the Apostles.^z While he was bishop of Tours, a poor half-clad man applied to him for a garment. St. Martin told the archdeacon to supply his wants, but just as he was about to perform mass, the poor man rushed into the vestry, complaining that the archdeacon had not furnished him with the promised dress. The bishop, on this, gave the suppliant his own

^x For he was not baptized till afterwards.

^y Sulpitius, d. V. B. M. § 2.

^z Chiefly by his contemporary and friend Sulpitius; the elegance of whose style does not allow us to think lightly of his abilities, whatever credence we may give to his stories.

^{*} However Sulpitius seems to attribute the opinion generally to his reputation for miraculous powers.—D. V. B. M. § 5.

tunic; and afterwards pressed the archdeacon to get one for the poor man, which he put on himself. Thus attired he proceeded to perform the service: but when he raised his arms, according to custom, in pronouncing the preface, the scantiness of the robe exposed them down to the elbows. Immediately, golden bracelets covered the exposed part; while a ball of fire rested upon his head, and was interpreted as a token of the visible descent of the Holy Ghost upon him, as upon the Apostles at the day of Pentecost.^a

Thus have we concluded our notices of the more generally revered saints, the observance of whose feasts is especially enjoined in the canon cited at page 127. Of the Apostles or Evangelists whose names occur in the list of holidays, which we are endeavouring to illustrate, it is sufficient to say, that the days appointed to be kept in memory of each were the same as are still noted for the same purpose in our calendar. As the principal ground for the regard shown to them rests upon the mention of them in the New Testament, it seems need-

Feasts of the
Apostles and
Evangelists
when kept.

^a Belethus, R. D. O. c. 163; Durandus, R. D. O. vii. c. 37. The story is told by Sulpitius, 2nd Dial. d. V. B. M. c. 1 and 2, with the exception of the uncovering of Martin's arms, and their celestial dress. Apparently he was present; for he adds: *Hæc licet celeberrimo facta die viderimus, in magnâ populi multitudine una tantum de virginibus, et unus de presbyteris; tres tantum videre de monachis. Ceteri cur non viderint, non potest nostri esse judicii.*

less to add the uncertain accounts preserved respecting them by later traditions.

Feast of St. Mary Magdalene, kept the 22nd of July. The same reason induces us to say nothing of the feast of St. Mary Magdalene, whose festival has not been preserved in England, but that it was kept on the twenty-second of July.

We return therefore to the three saints whose names we before omitted, because, though objects of English veneration, they have not been, in the same manner as those on whose histories we have already touched, held out to the general regard of the Christian world; St. Wulfstan, St. Thomas, and St. Oswald.

Origin of the feast of St. Wulfstan, kept January the 19th.

Bishop of Worcester, A.D. 1062.

Why he gave up the use of meat.

St. Wulfstan, the first-named of the three, was a native of Warwickshire, who became Bishop of Worcester in the eleventh century, and was celebrated, among other reasons, for the austerity of his life. His fasts are said to have been sometimes continued for four days together,^b and he gave up the use of meat from the following circumstance. One day, after he had been ordained priest, a cause in which he was engaged was about to come on; Wulfstan had first to celebrate mass, and that he might not go without his dinner, his attendants put down a goose to roast in the meantime. The house was near the church, and while engaged in his devotions the savoury odour of the food filled his

^b Simon Dunelm. Twys. 190; he adds—quod a nobis vix crederetur si non ab ipsius ore hoc audissimus.

nostrils, and the anticipated pleasures of the repast distracted his mind. In vain he strove against the temptation : to punish himself, when mass was over he went away without eating, and thenceforth, it is said, renounced the use of flesh and all more appetizing food.^c He seems to have been chiefly noted for the simplicity of his character and the fervour of his piety. Alone of all the Saxon bishops at the time of the Conquest, he preserved to his death the pastoral staff, and he appears to have narrowly escaped the fate of his brethren. Ten years after the Conquest, Wulfstan was cited before a great council of the Norman bishops and barons, held in Westminster Abbey, in which King William and Archbishop Lanfranc presided. The assembly, we are told, declared the Saxon prelate incapable of exercising his episcopal functions, from his ignorance of French,^d and the king and the archbishop accordingly required him to give up his crozier and ring to the latter.^e The aged bishop is said thereupon to have walked up to the tomb of Edward the Confessor, and thus addressed him : " Edward, from thee I received this staff, to thee therefore I return and confide it."^f He struck the tomb forcibly with

Story of the way in which he preserved his see at the Conquest.

In A. D. 1076.

^c William of Malmsbury, S. p. B. 279 ; John Brompton, Twys. 950.

^d John Brompton, Twys. 975 ; Hen. Knyght. ii. 2366.

^e John Brompton, Twys. 976.

^f John Brompton, u. s. ; Life of Edw. Confessor, Twys. 406.

his staff as he spoke, and added to the Normans, "I received it from hands better than yours, to those I give it back again; take it from them if you can."^g The tradition reports, that the staff entered the stone so deeply that none could pull it out but Wulfstan himself, when the judges had reversed their sentence.^g That he was left in possession of it seems undoubted.^h Little else of a miraculous character is recorded of him; but it is specially remarked that in the conflagration of the cathedral of Worcester soon after his decease, his tomb was not blackened by the smoke, and a mat on which he used to pray remained unhurt.ⁱ His festival was celebrated the 19th of January.

Origin of the feast of the translation of St Thomas the archbishop, kept the 7th July.

Cost of it.

The translation of St. Thomas the Archbishop, better known as Thomas à Becket, took place on the 7th of July, A.D. 1220, fifty years after his death, by order of Stephen Langton, the then archbishop. On this occasion refreshment was provided for man and beast,^k for every one who would ask for it between London and Canterbury, and wine flowed uninterruptedly^l in streams through the city during the whole day; so that the cost was scarcely defrayed

^g Hen. Knyghton, ii. 2366.

^h Math. Par.; Vit. Alb. S. Abb. i. 49, and authorities above cited; see Thierry's History of the Norman Conquest.

ⁱ William of Malsbury, S. p. B. 27.

^k Fœnum et præbendum.—Hen. Knyghton, Twys. 2428.

^l Jugiter, *ibid.*

in the time of the third successor of Stephen, Boniface.^m Of the life and death of this energetic man, the first Saxon archbishop after the Norman conquest, and the reputation for miracles acquired by his remains, too much is generally known to make it necessary for any particulars to be given here.ⁿ His death was commemorated the 29th of December.

Succeeded
A.D. 1214.

Of the third British saint above enumerated, it may however be desirable to give a more full account. St. Oswald was one of the kings of the Northumbrians; for nine years he governed them, and was as noted for his piety as his predecessor Eanfrid had been infamous, for apostatizing from the Christian faith. Before his first battle against the Britons, soon after he succeeded to the throne, Oswald planted a wooden cross firmly in the ground; and around this symbol of their faith the king and his army knelt and prayed, "to the Almighty living and true God, to preserve them in his mercy from the proud and fierce foe; for he knows how justly we undertake this war for the safety of our race." The next day victory crowned the efforts of his army. The cross still remained in the time of the Venerable Bede, and was believed

Commemo-
ration of
the death of
St. Thomas,
the 29th of
December.

Origin of the
feast of St.
Oswald, kept
the 5th of
August.

Succeeded to
the throne
A.D. 634.

His first
battle.

Bede born
679.

^m Hen. Knyghton, Twys. 2428. The Chronicle of Will. Thorn places the translation of St. Thomas in 1228.—Ib. 1882. But the chronicle of the Augustines at Canterbury agrees with the date given in the text, ib. 2259.

ⁿ See however Thierry's History of the Norman Conquest.

Plety of St. Oswald. to possess healing powers.^o Such was the devotion of St. Oswald, that he would continue in private prayer from the termination of the matin service to the break of day.^p As a proof of his charity we are told that once, as he was about to sit down to dinner, an attendant, whose business it was to provide for the poor, entered to tell him that a number of poor persons had arrived, and were asking alms in the street. Oswald ordered his own dinner to be given them, and a vessel of silver, upon which it was served up, to be broken into pieces and divided among the supplicants. Ædan, a bishop,—who, at the request of Oswald, had been sent over from Ireland, to instruct his people more fully in the Christian faith, Oswald himself acting frequently as interpreter,^q—was present at the time, and taking the king by the right hand said, “This hand shall never decay,”—a prophecy, says Bede, fulfilled by the preservation of his hands, which were cut off after his death, and kept in the church of St. Peter at Bamburgh, in Lincolnshire.^r St. Oswald was killed in a battle with the king of the Mercians on

Prophecy as to the preservation of his hand.

His death.

^o Bede, *Ecc. Hist.* iii. 2. He tells a story of a monk of the name of Bothelm, then living, who was cured by it of a broken arm.

^p *Ibid.* iii. 12. I presume this was in the winter season. In the summer, matins would be said by daylight; unless indeed the ancient custom of a night service was preserved.

^q *Ibid.* iii. 5.

^r *Ibid.* iii. 6.

the fifth of August, at a place called Maserfelth, of which the site is contested between Lancashire and Shropshire; the place where he fell was afterwards famed for the miraculous virtues possessed by the earth taken from it; first discovered by its effect upon a horse.^a His remains were collected by the care of his niece Osthryda, and deposited in the monastery of Bardney in Lincolnshire, at the earnest request of the monks. They at first had refused to admit the body within their walls, from provincial antipathy, but were convinced by a pillar of fire which rested upon it all the night, and was visible to the whole country round,^t of the respect due to it. Miraculous cures were wrought at his tomb,^u and by the dust of the place where the water with which his body was washed fell. But the general regard paid to St. Oswald's day, dates from a later period, when St. Peter and St. Paul appeared to a boy in a monastery at Chichester during the time of a great plague, and bad him tell the monks, that though he should die the next day after mass, the monastery would be preserved from further disease, through the intercession of St. Oswald; a

How the
place dis-
covered.

Miracles at-
tendant on his
translation.

Origin of the
general re-
gard to him in
A.D. 678.

^a Bede, Ecc. Hist. iii. 9.

^t Ibid. iii. 11. *Tota illa nocte columna lucis a carro illo, in which the body was laid, ad cœlum usque porrecta, omnibus pœne ejusdem Lindissæ provinciæ locis conspicua stabat.*

^u Ibid. iii. 11, 12. One, the cure from an intermittent fever of a boy, who was, Bede says, still living in the monastery in question.

prediction strictly fulfilled, says Bede,* in both respects.

The legends connected with the names included in the second of the lists, given by the canon of the synod of Worcester above cited, call next for our attention.

Origin of the
feast of St.
Vincent, kept
January the
22nd.
His martyr-
dom, A. D.
300.

And first among the names thus distinguished appears that of St. Vincent, a Spaniard by birth, who suffered martyrdom at Valentia, in the persecution under Diocletian, by order of the governor Dacianus. The special honour shown to his memory is perhaps to be attributed to the unusual amount of torture endured by him at his death. His body, we are told, was first stretched on a rack, then torn by iron combs, then placed upon a gridiron, where it was rolled about with red hot irons, and lastly he was thrown into a dungeon, where his feet were fixed in the stocks, and he was left to perish without human aid.† His martyrdom was commemorated on the 22nd of January.

Origin of the
feast of St.
John ante
Portam Latinam,
kept the
6th of May.

The feast next in order upon our list, that of St. John ante Portam Latinam, was in memory of the preservation of that Apostle, when plunged, in the time of Domitian, into a vessel of hot oil. The scene of his sufferings, according to the western tradition, took place in front of the Latin Gate at Rome, on

* Bede, Ecc. Hist. iv. 16. Bede says he heard this story from Bishop Acca, and others of the brethren of the monastery most worthy of credit,—fidelissimis.

† Hosp. d. F. C. 37, b.; Martyr. Rom. 64; Breviarium Rom.

the 6th of May.^z The eastern accounts place it at Ephesus.^a

From this incident in the life of St. John, the order of the festivals of which we have to treat, leads us to dwell on the history of St. Leonard, of Aquitaine, who was born, we are told, of noble parentage, and educated at Rheims, under St. Remigius. He led a solitary life, and was renowned for holiness, and miraculous powers, as much as for his benevolence to prisoners; whose freedom he, in numerous instances, purchased.^b His death was commemorated on the 6th of November.

Origin of the feast of St. Leonard, flourished circa A.D. 500, kept the 6th of November.

The St. Clement, whose feast next presents itself to our notice, is considered to be the same person whose name is mentioned in the Epistle to the Philippians.^c He is classed in the list of the popes, though with some question as to whether he is not entitled to the priority, next after Linus and Cle-tus;^d and is said to have been banished, by order of the Emperor Trajan, to the Chersonese. Here he found 2000 Christians, banished like himself, and employed in a stone quarry, where they were in great want of water. The holy man prayed with them for relief from this evil, and in answer to his prayers, a lamb appeared, standing with one foot raised, as if to point out the place where water

Origin of the feast of St. Clement, kept the 23rd of November.

His banishment to the Chersonese;

miracles;

^z Martyr. Rom.

^a Hosp. d. F. C. 84.

^b Martyr. Rom.

^c C. iv. 3.

^d Martyr. Rom.

might be found; and when Clement struck the spot on which the lamb had stood, an abundant spring gushed out, and supplied their necessities. The fame of the miracle brought crowds to hear his preaching, which was most successful in their conversion. But his success moved the anger of the Roman governor, who caused him to be flung into the sea, with an anchor round his neck. His friends stood weeping on the shore; when, as they prayed, lo! the sea retired three miles, and they saw his body, laid in a stone coffin, within a marble temple, with the anchor by its side; where it was intimated to them that they should leave it.^e Every year,—according to one account for 200 years after his death,^f the anniversary of the day was marked by a similar retreat of the sea, during seven days, to allow of pilgrims visiting his tomb.^g In the time of Pope Nicholas the First, his body is said to have been removed to Rome, and placed in a church dedicated to him.^h His death was commemorated the 23rd of November.

tomb;

translation,
A.D. 858 to
867.The translation of St.
Oswald took place A. D.
908.

The translation of St. Oswald commemorates the removal of his body to Gloucester, by Ethelfred, duke of Mercia, and his wife.ⁱ We have not been able to discover the day assigned to it.

^e Breviarium Rom.; Bede, Martyr.^f Petrus d. Natal. X. 98. ^g Breviarium Rom. Ant.^h Breviarium Rom.; Martyr. Rom.ⁱ John Brompton, Chron. Twys. 814.

We pass on then to St. Catharine, virgin and martyr, whose fame, formerly confined to the east, was spread through the western Church from the peculiar assistance rendered by her to the armies of the crusaders.^k She is said to have been a native of Alexandria of noble birth,^l and to have been beheaded under the Emperor Maximianus, after being first cruelly scourged, on the 25th of November, in her twenty-second year. Her beauty, her wealth, which she distributed to the poor, her learning, and her wisdom, are alike celebrated. The emperor, we are informed, vanquished by her in an argument as to the reality of his gods, summoned fifty philosophers to his aid; but Catharine, strengthened by the previous vision of an angel, so confuted them, that the emperor ordered them to be burnt alive; while they, as they were being led to the place of punishment, threw themselves at her feet, and professed, at her exhortation, their belief in Christ. The wife of Maximianus, and one of his chief captains, Porphyry, are numbered also among her converts; and a great multitude are said to have followed their example; moved by the miraculous destruction, at her prayers, of a new instrument of torture, prepared by order of the emperor, and consisting of two wheels, furnished with iron spikes, and moveable in contrary directions, between which

Origin of the feast of St. Catharine, kept the 25th of November.

Her martyrdom, A. D. 310;

St. Catharine's Wheel.

^k Martyr. Rom.

^l Breviarium Rom.

it was intended that she should be torn.^m Her body is said to have been carried by angels into Mount Sinai, and to have manifested many miraculous powers;ⁿ and from her tomb a spring of oil unceasingly flowed, with which sick persons, if anointed, were restored to health.^o

Her burial in
Mount Sinai.

Origin of the
feast of St.
Agnes, kept
the 31st of
January.

Her martyr-
dom;

translation,
A. D. 450.

Thus have we completed our notice of the saints, whose names are to be found in the second list of the days, marked out for peculiar regard by the canon of the synod of Worcester. We pass on to those especially held up by it to female veneration; and first to St. Agnes, whose death, in the persecution under Diocletian, is commemorated the 21st of January; her name is celebrated by St. Jerome and St. Augustine.^p She is said to have been beheaded in the thirteenth year of her age,^q after a vain attempt had been made to burn her alive; the flames, at her prayers, losing all power of affecting her.^r Her remains were translated to Constantinople by the Empress Pulcheria, the wife of Marcian.^s

^m Breviarium Rom. Ant.; hence St. Catherine's Wheel.

ⁿ Breviarium Rom.; Martyr. Rom.

^o Breviarium Rom. Ant. See Hospinian's examination of this legend, 148—151. There is also a story of her espousals to our Lord, which forms the subject of many pictures; see as to it, Petrus d. Natal. X. 105.

^p Martyr. Rom.

^q Breviarium Rom.

^r Martyr. Rom.; Breviarium Rom.

^s Martyr. Rom. In pictures, she is usually distinguished by a lamb. Hosp. d. F. C. 37.

The history of St. Margaret, the second name in this list, is a little like that of St. Agnes. As the death of the former was occasioned by her refusing the love of the Roman prætor,^t so is the love of Olybius, prefect of Antioch, for St. Margaret, assigned as the original cause of her sufferings. It is said, the disappointed and revengeful governor ordered her to be torn with steel combs, and her lacerated flesh to be scorched with hot coals; commanding then, as a variety of torture, that she should be plunged into a vessel of cold water.^u But the completion of the last-named order was prevented by an earthquake, and the appearance of a dove from heaven, who set a crown of gold upon her head, and healed her wounds; an event followed by the conversion of 5000 men, besides women and children. Before her execution,—for notwithstanding such a phenomenon, the prefect persisted in his purpose,—she prayed specially, that women in childbirth, who should call upon her for assistance, might find relief:^x thence she was regarded as the peculiar patroness of persons thus situated, and invoked, like a second Lucina.^y Her death was commemorated the 20th of July.

Origin of the feast of St. Margaret, kept the 20th of July.

Her sufferings;

prayers for women in child birth.

The story of St. Lucia, the third of these heroines of the Church, is adorned with wonders different in

Origin of the feast of St. Lucia, kept the 13th of December.

^t Hosp. d. F. C. 37; Breviarium Rom. Ant.

^u Breviarium Rom. Ant.; Hosp. d. F. C. 118.

^x Breviarium Rom. Ant.

^y Hosp. d. F. C. 118.

Miracles at
her death.

kind, though not inferior in degree, to those interwoven in the legends of St. Margaret. She is said to have been of a noble Syracusan family, and to have been put to death in the persecution under Diocletian; the person who originally set the laws in motion against her, being,—according to the analogy of the two preceding cases,—one to whom she had been espoused by her parents, before she came to the resolution of continuing a virgin. That resolution is attributed to a miraculous cure wrought upon her mother of a bloody flux, by the intercession of St. Agatha, of whom we shall next have to give an account. The prætor,—enraged at her refusal to sacrifice to the gods, and her declarations that she, as well as all who lived chastely and piously, were the temples of the Holy Spirit, ordered her to be dragged away to the place of punishment;^a but lo! by miraculous power, she remained fixed like a rock; no force which the prætor could command, though many yoke of oxen were employed,^a sufficed to move her away.^b In vain, then, he had blazing fagots and pitch heaped around her, and burning oil poured upon the flames,—they refused to hurt her.^c And at last, after her throat was cut, she still retained the power, before yielding up the ghost, of predicting the peace which the Church would enjoy, on the deaths of Diocletian and

^a Ubi virginitas ejus violaretur.—Breviarium Romanum.

^a Martyr. Rom.; Bede, Martyr. ^b Breviarium Rom.

^c Martyr. Rom.; Bede, Martyr.; Breviarium Rom.

Maximianus;^c and of receiving the Communion of the body and blood of the Lord.^d

St. Agatha, the last of the four whose names were selected by the synod as female examples, was, like St. Lucia, a native of Sicily, but of the town of Catania, and is said to have been put to death in the persecution under Decius. As with St. Margaret, so the passion of the Roman governor for St. Agatha is assigned as the cause of her sufferings. Scourging, the rack, the cutting off her breasts, and the rolling her body in burning coals, were unable to overcome her constancy.^e The wounds of her breast are indeed said to have been miraculously cured by a venerable old man, who came to her by night, in the dungeon where she lay, and announced himself as the apostle of Christ;^f and when she had been thrown into the dungeon again, after her last tortures, her death ensued only in answer to her prayers.^g In the place where she was buried is said to have been an inscription, indicating her noble character and voluntary death.^h Tradition ascribed it to an angelic hand.ⁱ

Origin of the feast of St. Agatha, kept the 5th of February.

Put to death A. D. 252.

Inscription on her tomb.

^c Breviarium Rom.

^d Bede, Martyr. ; Breviarium Rom. Ant.

^e Martyr. Rom ; Bede, Martyr.

^f Breviarium Rom. See Bede, Martyr. ; Hosp. d. F. C. 44.

^g Breviarium Rom.

^h Mentem, sanctam, spontaneam, honorem Deo, patriæque liberationem.—Hosp. d. F. C. 44. ⁱ Breviarium Rom. Ant.

Origin of the
feast of St.
Gregory, kept
the 12th of
March.

With St. Agatha closes the list of saints enumerated by the synod of Worcester. Of those, whose festivals are appointed to be kept by the canons of Exeter, in addition to the names mentioned by the former synod, St. Gregory, the first in the order of the calendar, is Gregory the Great, the patron of St. Augustine, whose death was commemorated the 12th of March.^k

Origin of the
feast of St.
George, kept
the 23rd of
April.

St. George, whose name next meets us, the guardian saint of England, is said to have suffered martyrdom in Cappadocia, in the time of Diocletian, after long protracted and accumulated torments, commemorated in the following verses:—

“ Carcere, cæde, siti, vinclis, fame, frigore, flammis,
Confessus Christum, duxit ad astra caput.”^l

Doubts as to
his history.

It was regarded as a proof of his high merit, that, though he suffered in the East, he should be so revered in the West; but nevertheless his fame has not escaped criticism, even at the hands of persons little disposed in general to be severe in their examination of the histories of the saints. His acts were condemned by Pope Gelasius in the fifth century, as forgeries of the Arians: and more sceptical inquirers have suspected that the ancient representation of him as killing a dragon who lies in

^k Martyr. Rom.; Bede, Martyr.

^l Martyr. Rom. In imprisonment, scourging, thirst, chains, hunger, cold, and fire, he confessed Christ, then soared to the stars.

watch for a beautiful virgin, has reference to the expulsion of Athanasius from Alexandria by George, the Arian bishop of Cappadocia, in the time of the Emperor Constantius; and that the virgin represents the city of Alexandria; the possession of whose see was the prize of the conflict.^m

The scene of the combat is placed even by the more orthodox legends in Lybia; but, according to their received explanation, the dragon is the devil, and the virgin some town or province, imploring the aid of St. George against his wiles.ⁿ His festival was kept the 23rd of April.

Orthodox explanation of the legend about him.

Of St. Augustine, the third of these worthies, we need only say, that he is the well-known missionary of Gregory to the Anglo-Saxons, and that his festival was kept on the 26th of May.^o

Origin of the feast of St. Augustine, kept the 26th of May.

These are all the names which the canons of the synod of Exeter notice beyond those mentioned by the synod of Worcester. But there still remain several names in the lists of saints' days contained in the canon attributed to the council of Oxford; names which, by the place retained by the greater part in the calendar of our Prayer Book, are shown to have been those of saints whose histories were more than others brought to the attention of the

^m Hosp. d. F. C. 79, 80; Gibbon, iv. 120; but see Milman's note.

ⁿ Martyr. Rom.

^o Bede, Martyr.

English nation, and of whose lives therefore it may be interesting to give some particulars.

Origin of the feast of St. Edmund the Confessor, Archbishop of Canterbury, under Hen. III.; kept the 16th of November.

The saint commemorated under the name of St. Edmund the Confessor, appears to have been an Archbishop of Canterbury. He did not indeed attain the honour of canonization until a period subsequent to the date of the council of Oxford; so that the appearance of his name in the list is a further argument against the genuineness of this canon. His feast was kept the 16th of November. His archiepiscopate was a troublous one; for the King and the Papal Legate were combined against him, and he felt, as his contemporaries said, that "When the shepherd and the wolf are allies, dire slaughter awaits the sheep."†

His ineffectual struggles to prevent delays in filling up ecclesiastical offices.

In vain, "at great cost," did he procure letters from Pope Gregory the Ninth, denouncing the evil practice of the King in keeping vacant ecclesiastical offices, and preventing the election of a successor, while, in the meantime, he kept in his own hands the revenues of the Church. In vain did he get the Pope to ordain, that if a vacancy was not filled up within six months the archbishop should have the right of nominating a successor. In vain did he comply with the demands of the Holy See, by giving up one fifth of his revenues to supply its wants, a step, says the old historian, which "led the other prelates of England to rush into the same ruin." The Pope, when the King bestirred himself,

† Math. Par. 545.

"became suddenly timid as a man," and revoked the letters.^q Wearied at the opposition he experienced, and at "seeing the English Church daily more and more trodden under foot, spoiled of its temporalities, and deprived of its liberties," he obtained leave of the King to retire into France, where he lived a voluntary exile, "intent continually on fasting and prayers."^r It was not long before his health sank, and he died, exclaiming, "Receive my spirit, O God: it is enough, yea, too much; for I see all things borne headlong into ruin."^s His canonization took place six years after his death; and the bull published on the occasion recapitulates the miracles by which he had already become famous.^t

His voluntary
exile, A.D.
1140.

Death, A.D.
1141.

Canonization,
A.D. 1147.

The next named saint, Edmund, King of the West Saxons, was killed in defending his country against the Danes, circa A.D. 886. His body was preserved at the well-known monastery of St. Edmundsbury in Suffolk: founded, it is said, by Canute, to expiate the crime of his death.^u Wonderful accounts were given of its freedom from decay.^v

Origin of the
feast of St.
Edmund,
King and
Martyr, kept
the 20th of
November.

^q Math. Paris, 527.

^r Math. Paris, 533.

^s Math. Paris, 545.

^t Math. Paris, *Additamenta*, 156; *Comp. account of St. Edmund*, by Knyghton, Twys. 2432.

^u *Camd. ii.* 73. See the account of the opening of his coffin by Abbot Samson.—*Chron. Joc. de Brak. edit. Camd. Soc.* p. 82.

^v *Chron. of John Brompton*, Twys. 806.

Thus much upon the additions to the calendar; appearing in the first list given in this canon.

Origin of the
feasts of St.
Fabian and
St. Sebastian,
kept the 20th
of January.

Of the saints included in its second list, St. Fabian, the first in order of the calendar, is known to us only as a bishop of Rome, who suffered under the Emperor Decius.^x

However of St. Sebastian, whose sufferings were commemorated with those of St. Fabian on the 20th of January, tradition tells us more. He was, it is said, a favourite of the Emperor Diocletian, and the commander of the first cohort.^y Here he became noted as a Christian, by his bold exhortations to his fellow-soldiers, of whom many were Christians in secret, to confess the faith of Christ; and by the miraculous restoration of her voice, to the wife of one Nicostratus, in whose house some of the Christians were confined.^z By the command of Diocletian he was shot through with arrows, and was left for dead: but he was found still alive by a woman who came to bury him during the night, and after his recovery again showed himself to the emperor, who ordered him to be beaten to death in the Hippodrome. His body was thrown into the Cloaca Maxima; but he discovered the spot where it lay in a dream to a Roman matron, by name Lucina, by whom it was buried, and thus preserved for Christian veneration.^a

^x Martyr. Rom.; Bede, Martyr.

^y Breviarium Rom.; Bede, Martyr.

^z Breviarium Rom. ^a Breviarium Rom.; Bede, Martyr.

The third in order of these saints is St. Blasius, Origin of the feast of St. Blasius, kept the 3rd of February. a bishop of Sebaste in Armenia, who, like Sebastian, was one of the martyrs during the persecution of Diocletian. While imprisoned, he is reported to have healed many sick persons who came to him; but his beneficent miracles did not prevent his being scourged, put on the rack, torn with iron spikes, and at last beheaded: his death was commemorated on the 3rd of February.^b

Of the many saints who lay claim to the name Origin of the feast of St. Felix, kept the 8th of March. of Felix, the one enumerated in our canon appears to have been a bishop, of the ancient town of Dunwich, now overwhelmed by the sea. At his own His mission, A.D. 631. request he was sent from Burgundy, his native country, by Pope Honorius, to preach to the English, and is said to have converted the province of East-Anglia.^c His feast was kept the 8th of March.^d

The next name which calls for our attention, for Origin of the feast of St. Alban, kept the 22nd of June. we have before spoken of St. Dunstan,^e is St. Alban, whose martyrdom was commemorated the 22nd of June. He is said to have been also one of the victims of the persecution of Diocletian. His conversion is attributed to the instruction of a clergyman, whose life the saint, while yet a pagan, saved

^b Breviarium Rom.; Martyr. Rom.

^c Bede, Ecc. Hist. ii. 15.

^d Martyr. Rom.

^e Page 37.

from his persecutors. He was beheaded on a rising ground near Verulam, which afterwards became the site of the well-known monastery bearing his name. A spot, says the venerable Bede, "enamelled, or rather clothed, with various flowers; where are no sudden heights, no precipitous or abrupt steeps; but nature rounds it off, in gently swelling and wave-like slopes; thus rendering it worthy, from of old, by its inherent beauty, to be dedicated by the blood of the blessed martyr."

Miracles at
his death.

His death was attended by many wonders. At his prayers the little river, over which he was to be led to the place of execution, dried up, so as to allow him to pass; the crowd of spectators blocking up the bridge. The executioner, converted by the sight, was beheaded with him; and, as the water had ceased to flow at his prayers, so did it rise, in answer to the same powerful supplications, where it had never flowed before, in a spring bubbling out of the top of the hill.^f

Origin of the
feast of St.
Jerome, kept
the 30th Sep-
tember.
His death,
A. D. 420.

Such, according to tradition, was the death of this martyr of our own country. Of St. Jerome, whose name succeeds, we need only say that he is the well-known father of the Church, who is said to have died at Bethlehem in the ninety-first year of his age. His day was kept on the 30th of September.^g

^f Bede, Ecc. Hist. i. 7.

^g Bede, Martyr.

The next name is perhaps less generally known, at least as that of a person. St. Fides, another of the heroines of the Church, whose death was commemorated on the 6th of October, was a victim of the persecution under Diocletian. She suffered at Agesne in Gaul.^b Like St. Lawrence she was broiled upon a gridiron; but the fire did not harm her, and after a variety of cruel tortures she was beheaded.ⁱ

The St. Dionysius, whose name follows in our list, appears to be the Areopagite converted by St. Paul. Of him tradition records that he was first ordained bishop of Athens, then came to Rome, whence he was sent by St. Clement into Gaul, and, becoming bishop of Paris, was put to death with Eleutherius, a deacon, and Rusticus, a priest, after the most cruel tortures, by Fescenninus, prefect of that city.^k He it is, who is said to have exclaimed, on beholding the darkness at the time of the crucifixion, "Either the God of Nature suffers, or the world is about to be dissolved."¹ And, either as

Origin of the feast of St. Fides, kept the 9th of October.

Origin of the feast of St. Dionysius, kept the 9th of October.

Legend of his exclamation at the crucifixion.

^b Martyr. Rom.

ⁱ Hosp. d. F. C. 139. This St. Faith must not be confused with another St. Faith, who is asserted to have suffered, under the Emperor Hadrian, at Rome, with St. Hope, and St. Charity; and whose death was commemorated by the Latins on the 1st of August, and by Greeks on the 17th of September.—Martyr. Rom.

^k Martyr. Rom.

¹ Breviarium Rom.

Of his
walking after
his death.

a reward for this penetration, or for some other cause, he was permitted, after having been beheaded, to walk two miles with his head in his hand, viz. from the place called the Mount of Martyrs, where he suffered, to that where his remains are said to lie.^m His festival was kept the 9th of October.

Origin of the
feast of St.
Cecilia, kept
the 22d No-
vember.

And thus we come to the noted name of St. Cecilia, whose day falls the 22nd of November, but who is not famed in the legend of her life or death, for those powers of music now associated with her memory. She is said to have suffered under the Emperor Severus at Rome,ⁿ after having converted her betrothed husband Valerianus, and Tiburtinus her brother, by the sight of the angel under whose guardianship she was.^o Almachius, the prefect of the city, caused her to be shut up in a heated vessel, or, according to one account, a vessel of boiling water,^p for a day and a night, without killing her; after which the executioner in vain tried three several times to behead her. She survived three days;^q her remains were at first interred in the cemetery of Callistus, whence they were removed, with those of other saints, by Pope Paschal, in consequence of a revelation from herself, into

Her transla-
tion, A. D.
821.

^m Hosp. d. F. C. 140.

ⁿ Martyr. Rom.; Bede, Martyr.

^o Breviarium Rom.

^p Mantuanus, ap. Hosp. d. F. C. 147 b.

^q Breviarium Rom.; Bede, Martyr.

Rome. Her festival was kept on the 22nd of November.^r

The translation of St. Benedict, the founder of the well-known order of the Benedictines, is the event commemorated in the next feast enumerated by our canon; but it seems somewhat apocryphal. It is not mentioned by Baronius in his Martyrology. It is said to have taken place at a time, when the monastery of Mount Cassino, where the saint was buried, was in danger of being destroyed by the Lombards; and that his body was conveyed to the monastery of Floriacum.^s St. Benedict's day was the 21st of March. His death is placed in the sixth century.^t

Origin of the feast of the translation of St. Benedict, kept the 11th July.

St. Benedict died between A.D. 540 & 558.

The last names in this list, those of St. John and St. Paul, commemorate two brothers who are reported to have suffered martyrdom at Rome, in the time of the Emperor Julian.^u Their feast fell on the 26th of June.

Origin of the feast of St. John and St. Paul, kept the 26th June; put to death A.D. 363.

There still remain to be noticed two English saints of Saxon origin, to whom Archbishop Arundel concedes a place in his list of holidays; St. Cedde or Chad, and St. Winifred or Wenefreda; and one saint of more general celebrity, St. Anne.

Origin of the feasts of St. Cedde, kept the 2nd March, and St. Winifred, kept the 3rd November.

^r Martyr. Rom.

^s Petrus de Natal. vi. 82. This was a Benedictine abbey, situated, according to Moreri (Dic. Hist. St. Benoist), at Fleury on the Loire, near Orleans. But there appears to have been another of the name near Rouen, Neustria Pia, 369.

^t Baron. Martyr. Rom.

^u Martyr. Rom.

St. Cedde
flourished
A.D. 664;
converts the
Anglo-
Saxons;
is bishop of
Holy Island
and of Lich-
field.
His awe at
thunder.

St. Cedde lived in the seventh century; and is handed down to us as the missionary of the East Saxons.^x He was educated at the well known monastery of Lindisfarne, or Holy Island; of which he became the bishop, exercising at the same time the like jurisdiction over part of Mercia around Lichfield, where he dwelt.^y Tradition described him as peculiarly impressed by storms, especially of thunder and lightning; which he called the voice of God, who had raised his hand, threatening though “forbearing to strike,” to call men to repentance, and lower their self-sufficiency. On these occasions he would go into the church, and continue in prayer until the storm abated. Seven days before his death, a monk named Ovvinus, who was standing outside the building in which he lay, heard a sound as of heavenly music, attendant upon a company of angels, who visited the saint, to forewarn him of his end. His tomb at Lichfield had a hole in it, through which pilgrims used to take out portions of the sacred dust, which, dissolved in water, they gave to sick men and animals to drink.^z

Is visited by
angels.

His tomb.

St. Winifred.

St. Winifred is more popularly known than St. Cedde, from the association of her name with the spring at Holywell, in Flintshire: whose clear cold waters, according to Camden’s account, worked cures on those who bathed in them, so speedy as “to be

Cures
wrought by
her well.

^x Simon Dunelm. Twys. 2; John Brompton, ib. 774.

^y Bede, Ecc. Hist. iii. 3.

^z Bede, u. s.

almost miraculous." She is said to have been a daughter of Thewith, a nobleman of those parts, and to have been instructed in the Christian religion by her uncle St. Beuno. Cradoc, the king's son, fell in love with her, for her beauty; and one day finding her alone, gave full utterance to his passion. The maid fled from him, down the hill, at the bottom of which the spring now breaks forth. In his fury he cut off her head; and where it fell the water gushed out. St. Winifred was however restored to life at the prayer of St. Beuno; took the veil, and afterwards became abbess of a convent at Gwytherum in Denbighshire, whence, in the reign of King Stephen, her remains were removed to Shrewsbury. By the powerful intercession of St. Beuno she is said to have obtained the privilege, that whatever present she might send him by means of the fountain, should come to his hands at Glynogivar, fifty miles distant,—and that the marks of her blood should never be washed from off the stones in the well. Red spots, produced upon the stones by an odoriferous species of moss, were still shown in Camden's time as proofs of the lasting nature of this stain.^a

Her history.

Restoration
to life.

The marks of
her blood.

Of the last upon the list of our saints, St. Anne, we shall say no more than that she is called the Mother of the Virgin Mary; and that some years before the time of Archbishop Arundel, Pope

Origin of the
feast of St.
Anne, kept
the 26th of
July.

^a Camden, ii. 591.

Her festival
ordered to be
observed,
A. D. 1334.

Urban the Eighth had directed her festival to be kept; and its observance, upon the 26th of July, by the full service, though without requiring abstinence from labour, had in consequence been enjoined by Arundel's predecessor, Archbishop Courtney.^b

^b Spel. Con. ii. 636.

CHAPTER V.

OF THE LAWS AS TO LABOUR AND BUSINESS ON SUNDAYS AND HOLIDAYS SINCE THE REFORMATION.

Cases in which work allowed on Holidays.—Number of Holidays reduced by Henry VIII.—Working on abolished Holidays—St. Thomas à Becket—Working and Trading on Sundays and Holidays, and their Number—Laws of Edward VI.—Of Queen Elizabeth—Of James I.—Of Charles I.—Labour or Business on Sundays—Law of Charles II.—Hackney Coaches—Laws of William III.—of Anne—Watermen—Laws of William III.—of George II.—of George III.—Sale of Mackerel—Laws of William III.—of George III.—Fish Carts—Laws of George III.—Bakers—Laws of George III.—of George IV.—Capture of Game—Laws of George III.—of William IV.—Good Friday—Law of George III.

AFTER this long—but, we hope, not wholly uninteresting digression, we return to our more immediate subject, the laws, namely, concerning the observance of the days thus appointed to be kept holy, in commemoration either of the history of the great Author of the Christian faith, or of the more remarkable of his disciples.

But before we proceed to notice, as the point we had reached in our inquiry would next lead us to do, the changes introduced at the Reformation in these laws, it is proper to observe that, according to the ancient ecclesiastical law, exemptions could be obtained in special cases from the general obli-

Of the exemptions permitting work on holidays.

Instance in
Holland, A.D.
1432, and
under the
authority of
Alexander
III. A.D.
1150—1181.

gation to abstain from work on the days reputed holy. In England indeed we have not met with any instances of the exercise of this relaxing power, but other countries afford them. Thus in Holland, a general custom, sanctioned by the Archbishop of Utrecht in the fifteenth century, allowed ripe fruits to be cut on the Lord's day.^a And long previously Pope Alexander the Third, at the request of the Archbishop of Drontheim, allowed the inhabitants of that place to take herrings or pilchards if they came to land on Sundays, or other festival days, except the greater feasts,^b on the plea of necessity; but on condition of their giving a fitting portion to the neighbouring churches, and the poor of the Church.^c

Such was the state of the law received in England, with respect to the days to be observed as holy, and their consecration by cessation from labour, and other secular avocations, when the sixteenth century ushered in the Reformation.

Feeling as to
the observance of holi-
days at the
Reformation.

The prevalent feeling among the moving party in England in that great ecclesiastical revolution, as to the regard to be shown to these venerated

^a This was confirmed in 1592, after the Reformation, by Keur v. Delfant, Ayliffe's Parergon, 491, London, 1726.

^b I. e. according to the commentators, the Nativity, Epiphany, Easter, Ascension day and Whitsunday.

^c X. ii. 9, 1. The name mentioned in the Decretal is Tri-buriensis, but this is clearly an error, since there is no such archbishopric where herrings can be taken.

seasons, seems to have differed both from that which prevailed before and that which has since grown up. They leant decidedly to the side of relaxation; and proceeded in the first instance to lessen the number of holidays. And so far they agree with more modern views. But as in this respect they differed from the ancients, so in their views respecting the Lord's day they differed from those who succeeded them.

No sooner had the breach between Henry the Eighth and the court of Rome become irreparable, Canon of A.D. 1536, 28 Hen. VIII. reducing the number of holidays. than the King and Convocation proceeded to abolish the feast of the patron of every church, and "all those feasts or holidays" which fell either in harvest time, i. e. between the 1st of July and the 29th of September, or in term time at Westminster, except the feasts of the Apostles, of "our blessed Lady," and of St. George, and those whereon the judges did not use to sit in judgment.^d On all such days it was made lawful "for any man to go to his work and occupacyon as upon any other workye day." Various and weighty are the reasons assigned for the alteration. "The number of holidays," it is observed, "was so excessively grown, and yet daily more and more, by men's devotion, yea rather superstition, was likely further to increase;" and this Reasons assigned for this change.

^d See p. 77, as to these. The times mentioned as term are those when the term was said to be full, i. e. excluding all the days prior to the fourth day after the essoign day. See p. 56.

Idleness
caused by
them ;

and riotous
living.

Ordinance,
A. D. 1541, 33
Hen. VIII.
for the obser-
vance of the
feasts of St.
Luke, St.
Mark, and
St. Mary
Magdalene.

prejudiced the commonwealth by being the occasion "of much sloth and idleness, very nourish of theives and vagabonds, and of divers other unthriftiness and inconveniences, as of decay of good mysteries and arts, utile and necessary for the commonwealth, and loss of man's food, many times being clean destroyed through the superstitious observance of the said holidays, in not taking the opportunity of good and serene weather offered upon the same in time of harvest;* and also pernicious to the souls of many men, which, being enticed by the licentious vacation and liberty of those holidays, do upon the same commonly use more excessive riot and superfluity than upon any other days ; and sith the Sabbath day was ordained for man's use, and therefore ought to give way to the necessity and behoof of the same," "much rather any other holiday instituted by man."†

In this sweeping enactment, however, it was discovered before long by the royal reformer, that he had gone a little too far ; St. Luke's, St. Mark's, and St. Mary Magdalene's days fell within the times wherein no feasts were to be kept, and yet "their names were often and many times mentioned in plain and manifest scripture." Another ordinance was therefore issued to repair the slight put upon these venerable persons. Four years after

* Compare the imperial laws as to Sunday, pp. 91, 92.

† Wilk. Con. iii. 824 ; and letter of Cranmer enjoining the publication of this canon, *ibid.* 827.

their abolition the observance of their feasts as holidays, as they had been used in time past, was enjoined,^g provision being further made for the carrying out of the former canon in respect of the feasts of the Invention^b and of the Exaltation of the Holy Cross, and that of St. Lawrence.ⁱ

But there was some difficulty in inducing the people to abstain from reverencing the days they had been accustomed to reverence before. Two years earlier than the last-mentioned decree, we find, from a mandate issued by the then Bishop of Exeter to his archdeacons, that "divers artificers, husbandmen, and labourers," used to "leave their works and occupations every Saturday and other

Mandate of the Bishop of Exeter as to working on the abolished holidays, A.D. 1539.

^g Wilk. Con. iii. 859. The observance of St. Mark's day had been directed some time before.—Wilk. Con. iii. 828.

^b Said by this ordinance to be commonly called Saint Elyn's day, (q. Helen, from the Empress Helena).

ⁱ The decree goes on to prohibit "divers superstitious and childish observances yet to this day observed and kept in many parts of the realm: as upon St. Nicholas, St. Catharine, St. Clement, the Holy Innocents, and such like, children be strangely decked and apparelled to counterfeit priests, bishops and women, and so led with songs and dances from house to house, blessing the people, and gathering money; and boys do sing mass, and preach in the pulpit, with other such unbefitting and inconvenient usages, rather to the derision, than to any true glory of God, or honour of his saints, and rather resembling the unlawful superstition of Gentility, than the pure and sincere religion of Christ:" and therefore obnoxious to his Majesty, who "minded nothing so much as to advance the true glory of God without vain superstition."

Prohibition of popular practices on the days of St. Nicholas, St. Catharine, St. Clement, and the Holy Innocents.

holiday, even at noon; after the right custom and usage of the Jews, which," says the Bishop, "they might continue till evening song." Some fishermen also would not "go to sea to fish for their living and the commodity of their neighbours upon divers Saints' days," which were "annulled and utterly abrogate." Again, some shoemakers were "so fondly and superstitiously set to worship Saint Lewis's day,"^k that they would not shoe any man's horse thereon, "whatsoever need shall fall to occupy the same." So too some carriers would not upon that day "carry hay or other things necessary for the use of man;" all, superstitions and abuses, "plainly against God's honour, and the commandment of the Sabbath day, against charity and the commonwealth;" and—what admitted of less question, "against all laws and injunctions of our sovereign Lord the King, the supreme head and governor under Christ of this Church of England." Against these abuses then, "thought to be maintained by lack of good instruction, showed in parish churches and chapels by the curates therein," the archdeacons are directed to provide, first by seeing that the curates taught the

^k Whether this St. Lewis is the Bishop of Thoulouse, who died A.D. 1297, and whose festival was kept August the 19th, or the King of France, who died 1270, and whose festival was kept August the 25th, or some other St. Lewis, we know not how to determine. These two only are mentioned either by Baronius, Martyr. Rom. or Petrus de Natal.

people of their errors ; and, secondly, by causing offenders to be “diligently inquired after and punished.”¹

Against the Saxon archbishop, the martyr who had lived so long in the hearts of the Saxon race in whose cause he had died,^m—against St. Thomas of Canterbury more formal proceedings were taken. If we may trust the account preserved by an Italian narrator, not far removed from the times of Henry the Eighth, a suit was regularly instituted against him, for the “scandals he had committed” against his majesty’s royal predecessors, and “the injustice with which he had arrogated to himself the title of martyr ; whereas he ought to have been accounted a contumacious rebel.” To appear to this suit he was regularly cited, by a proclamation made at his tomb. Thirty days space was allowed him ; and since he did not again,—as at his trial before the barons of Henry the Second, appear amidst his enemies in his archiepiscopal robes, with his cross in his hand, to disconcert their plans,ⁿ the council pronounced sentence, that his bones should be taken from his sepulchre and burnt, and the gold and silver of his shrine be confiscated to the king’s use.^o

Process
against St.
Thomas à
Becket, A.D.
1538.

Related by
G. Pollini, in
a history
published
A.D. 1594.

¹ Wilk. Con. iii. 846.

^m See Thierry, History of the Norman Conquest, bk. ix. on the points in dispute between Henry the Second and Thomas à Becket.

ⁿ See Thierry, History of the Norman Conquest, ix. A.D. 1164.

^o Girol. Pollini, iii. c. 4, p. 153. Ed. Rome, 1594. Cited in Wilk. Con. iii. 835.

Proclamation, A.D. 1531, Henry VIII., forbidding the celebration of his day, or the calling him a saint.

But whether or not this form were gone through, sentence was in effect pronounced upon the saint by a proclamation, dated the year after that assigned for his trial. Whereas, so runs this document, it “appeareth now clearly, that Thomas à Becket, sometime Archbishop of Canterbury, stubbornly, notwithstanding the wholesome laws established against the enormities of the clergy,” by Henry the Second, “of his froward mind, fled the realm into France, and to the Bishop of Rome, maintainer of those enormities, to procure the abrogation of the said laws, whereby arose much trouble in this realm; and that his death, which they falsely call martyrdom, happened on a rescue made,” and by an accidental blow, given him “in the throng” of a tumult caused by his violent resistance—the proclamation does not say to what, but the use of the word “rescue” insinuates, to a legal process; and Whereas his canonization was made by the Bishop of Rome, “because he had been a champion to bear his usurped authority, and a bearer of the iniquity of the clergy:” For these, and “other urgent causes too long to recite,” the King and his council pronounce, that “there appeared nothing in his life and exterior conversation, wherefore he should be called a saint,” but that rather he should be “esteemed a rebel and traitor to his prince.” “Straightly, therefore, his Majesty charged and commanded,” that the Archbishop

should not be “esteemed or called a saint any more;” that his images and pictures should be pulled down, the day used to be festival in his name be not observed, and the services razed out of the books.^p A caution is added at the same time, against observing any of the festival days already abrogated, “to the intent that his grace’s loving subjects should be no longer led to commit idolatry, as they have done in times past;”—“his Majesty’s indignation, and imprisonment at his Grace’s pleasure,” being held out as the consequence of disobedience.

Caution against observing any of the saints’ days abrogated.

As the Reformation advanced, a tendency manifested itself to lessen the degree of strictness with which the festivals retained were required to be observed; and that without making any distinction between the Lord’s days, and other holidays. Thus, in the first of Edward the Sixth, injunctions published in his name direct, “all parsons, vicars, and curates, to teach and declare unto their parishioners, that they may, with a safe and quiet conscience, in the time of harvest labour upon the holy and festival days, and save that thing which God hath sent; and if, for any scrupulosity or grudge of conscience, men should superstitiously abstain from working upon those days, that then they should grievously offend and displease God.”^q And

Tendency to relax the strictness required in the observance of all holidays, including Sundays;

in the injunctions of Edw. VI.;

^p Wilk. Con. iii. 847.

^q Wilk. Con. iv. 6.

and in Cranmer's visitation articles, A.D. 1547.

Archbishop Cranmer's visitation articles confine themselves to the inquiry, whether any "innholders, or ale-house keepers, do use commonly to sell meat and drink in the time of common prayer, preaching, or reading of the Homilies or Scriptures."^r

Act, A. D. 1552, as to the observance of holidays.

At length, toward the end of the reign of Edward the Sixth, the ruling authorities thought fit to appoint that certain days, and those only, should be kept as holidays, and times of abstinence from lawful labours. The list agrees precisely with that to be found in the Prayer Book, including Sundays; and it is therefore unnecessary to give it in detail, further than to remark, that it differs from the regulations of Henry the Eighth above noticed, by the exclusion of the feast of St. Mary Magdalene.

Reasons assigned for their observance.

The reasons for appointing these days to be observed are given, with much clearness and eloquence, in the preamble to the act. "Forasmuch," it says, "as at all times men be not so mindful to laud and praise God, so ready to hear God's holy word, and to come to the Holy Communion and other laudable rites, which are to be observed in every Christian congregation, as their bounden duty doth require: Therefore, to call men to the remembrance of their duty, and to help their infirmity, it hath been wholesomely provided, that there should be

^r Wilk. Con. iv. 24. Art. 25.

some certain times and days appointed, whereon the Christians should cease from all other kind of labour, and should apply themselves only and wholly unto the aforesaid holy works properly pertaining unto true religion; that is, to hear, to learn, and to remember Almighty God's great benefits, his manifold mercies, his inestimable gracious goodness so plenteously poured upon all his creatures, and that of his infinite and unspeakable goodness, without any man's desert; and in remembrance thereof, to render unto him most high and hearty thanks, with prayers and supplications for the relief of all our daily necessities. And because these be the chief and principal works wherein man is commanded to worship God, and do properly pertain unto the first table; therefore, as these works are most commonly, and also well may be called God's Service, so the times appointed specially for the same are called holy days, not for the matter and nature, either of the time or day, nor for any of the saints' sakes, whose memories are had on those days (for so all days and times considered are God's creatures, and of like holiness), but for the nature and condition of those godly and holy works, wherein only God is to be honoured, and the congregation to be edified, whereunto such times and days are sanctified and hallowed, that is to say, separated from profane uses, and dedicated and

appointed, not unto any saint or creature, but only unto God and his true worship. Neither," continues the preamble, "is it to be thought that there is any certain time or definite number of days prescribed in Holy Scripture, but that the appointment both of the time and also of the number of the days, is left, by the authority of God's word, to the liberty of Christ's Church, to be determined and assigned orderly in every country, by the discretion of the rulers and ministers thereof, as they shall judge most expedient to the true setting forth of God's glory and the edification of their people. Be it therefore enacted by the King, our sovereign Lord, with the assent of the Lords spiritual and temporal, and the Commons in this present Parliament assembled, and by the authority thereof," in

Punishment for commanding abstinence from labour on other days.

manner already mentioned. The commanding abstinence from labour, on any but the days specified in this statute, was made an offence punishable by the bishops and archbishops in their several dioceses.

Labour allowed on the days appointed to be kept holy.

On the other hand, it was enacted, that it should "be lawful to every husbandman, labourer, fisherman, and to all and every other person, of what estate, degree, or condition he be, upon the holy days aforesaid, in harvest, or any other time of the year when necessity shall require, to labour, ride, fish, or work any kind of work at their free wills and pleasures."^s So that the act, in spite of its pre-

^s 5 & 6 Edw. VI. c. 3.

amble, has much more of a negative than a positive character.^t

The reign of Queen Mary revived the ancient law; and the act of Edward, last cited, is to be found among the list of acts repealed by her first parliament.^u

This act repealed under Queen Mary.

A middle course seems to have been, in all ecclesiastical matters, peculiarly characteristic of the reign of Elizabeth. If circumstances, or conviction, or both, carried her away from the ancient belief,^x she was not less disinclined to all that approached the views of the Calvinistic reformers; that seed, which, in due time, ripened among us into Puritanism. The act of Edward, by which the number of the festivals, whereof the observance was enjoined, was so materially curtailed, remained repealed throughout her reign, as Mary had left it; and an act passed soon after her accession, places the observance

Character of the regulations on this subject in the reign of Elizabeth.

^t We may observe here, that the Knights of the Garter are specially excepted from the operation of this statute; and allowed to "celebrate solemnly the feast of their Order on the 22nd, 23rd, and 24th days of April, or at such other times as they and the sovereign shall think fit."

^u 1 Mary, sess. 2, c. 2.

^x She notified her accession to Paul IV.; but the uncompromising tone adopted by the zealous and arbitrary old man, rendered an accommodation with him impossible; he insisted on a restitution of all the church lands as a preliminary, which the more conciliatory Cardinal Pole had not insisted upon, even in Mary's time; and excommunicated Elizabeth on her refusal.—*Ranke, Hist. of the Popes*, i. 320.

Act passed
A. D. 1538;
as to Sundays
and holidays.

Injunctions
of the same
date.

Canons of
A. D. 1571.

Injunctions of
Archbishop
Grindall,
A. D. 1571.

Articles for
ordinance of
prayer, &c.
A. D. 1564.

of Sundays and other holidays on the same footing.⁷ Nor does she appear to have been inclined to enforce upon those days any strict abstinence from labour, or secular business. Her injunctions, published in the first year of her reign, repeat the already cited direction of the first of Edward VI.,² and confine their prohibition against the selling of meat or drink to the same times as Cranmer's visitation articles.

To these same times, the canons of 1571 limit the restriction upon the sale of their wares, by pedlars upon Sundays or other holidays.³ And to the same hours the injunctions published by Grindall, Archbishop of York, in the same year, for the observance of these days, confine themselves, adding a prohibition—to innkeepers against admitting, during such times, any, to “drink, play at cards, tables, or bowls:”—and to shopkeepers, against keeping their shops then open: and directing that, in “fairs and common markets upon the Sundays, there be no shewing of wares before all the morning service, and the sermons, if there be any, be done.”^b A more extensive prohibition is indeed found in certain articles for the ordinance of prayer and sacraments, presented to the Queen by the clergy, and assented to by her some years earlier. One of these orders,

⁷ 1 Eliz. c. 2.

² Wilk. Con. iv. 184, 20th and 33rd Inj. ; and see ib. 190.

³ Wilk. Con. iv. 266.

^b Ib. 269.

"that on Sundays there be no shops open, nor artificers commonly going about on their worldly affairs,"^c but even this does not go further, as to fairs and markets on the Sunday, than Archbishop Grindall: while we may infer from his injunctions as to shops, that it was not very strictly enforced.

The Convocation of 1562 were inclined to do more: for they are believed to have originated a bill for the postponing such fairs and markets as fell on a Sunday, to the next working day, which was twice read, but by Elizabeth's influence was thrown out.^d

Bills for the better observance of the Lord's day rejected.

The reign of James the First produced the revival of the act of Edward the Sixth, among a number of other statutes,^e and an enactment which seems to cast especial imputation on the piety of the shoemakers; while it perpetuates for us the names of the then fashionable articles of their craft. "No shoemaker," it enacts, "shall show, to the intent to put to sale, any shoes, boots, buskins, startopps, slippers, or pantosles, upon the Sunday, on pain of forfeiting 3s. 4d. a pair, and the value thereof; one-third to the King; one-third to him who shall sue; and one-third to the town or lord

In A. D. 1604, 1 James I., Act of Edward VI. revived,

and enactment against selling shoes on Sundays.

^c Wilk. Con. iv. 248.

^d Gib. Cod. 242. Another bill "for the better observance of the Lord's day," passed both houses in 1586; but was rejected by the Queen; and one introduced by the bishops, fifteen years before, also failed. Gib. Cod. 236.

^e 1 Jas. I. c. 25, s. 48.

of the leet where the offence shall be committed.”^f The restriction of this law to the Lord’s day seems to attest the growth of the modern religious spirit, by which that day is looked upon as substituted for the Jewish Sabbath, and required to be observed, in some respects,^g with much more than the strictness of the Jewish festival, while the other festivals of the ancient Church are treated with total, or all but total, neglect.^h However in this reign, as in the last, all attempts to legislate generally for the stricter observance of the Lord’s day, though three several times renewed,ⁱ proved unsuccessful.

A. D. 1627.
3 Charles I.
Law against
carriers exer-
cising their
vocation on
Sunday.

But in the beginning of the reign of Charles the First we meet with a law against the exercise of their vocation, by “carriers, waggoners, carters, wainmen, butchers, and drovers of cattle, by whom,” says the preamble, “the Lord’s day, commonly called Sunday, is much broken and profaned, to the great dishonour of God, and the reproach of religion.” Twenty shillings penalty is imposed by this act on the carrier, the waggoner, the carter, or the wainman, who shall travel on that day, by themselves or any other; and 6s. 8d. on any butcher, who by himself, or any other for him, with his privy or

^f 1 Jas. I. c. 22, ss. 28, 46.

^g Viz. the practice of amusements.

^h Christmas day being the only exception.

ⁱ In the third, seventh, and twenty-first years of this reign.—
Gib. Cod. 236.

consent, shall then kill or sell any victual. The penalty is directed to be employed for the use of the poor of the parish where the offence is committed; with a power to the magistrate, before whom the offender is brought for trial, to allow one-third of the forfeiture as a reward to the informer. Six months are limited as the time within which the information may be laid, after the commission of the offence; and the offender is left subject, notwithstanding his punishment under the act, to such proceedings as the ecclesiastical courts might take against him "for his soul's health."

The dominion of the Long Parliament, and of Cromwell, was not marked by any alteration in the law concerning holy seasons.^k The Independents, indeed, are said to have looked upon all days as alike under the Gospel dispensation;^l and were therefore little likely to make fresh laws for the observance of any days in particular. Yet they did not repeal the laws already existing.

At length, in the reign of Charles the Second, little as the period enjoys a reputation for piety, we find, first, a provision in a statute for the regulation of the navy, that "the Lord's day be observed

No alteration
under the
Long Parlia-
ment and
Cromwell.

Under
Charles the
Second, act
for pre-
venting on
the Lord's
day

^k A bill for the better observation of the Lord's day was however passed by both houses, in A.D. 1640, but was stolen out of the Lords, before it received the royal assent.—Gib. Cod. 237.

^l Clavis Cal. i. 205.

any work
done in a
man's ordi-
nary calling ;

or the selling
of any wares ;

or the tra-
velling of
drovers ; &c.

according to law ;"^m while an act of a subsequent year carries further than had been done under any of our sovereigns, since the days of the Heptarchy, the prohibition of labour or business upon the Lord's day. "Be it enacted," says that statute, "that all the laws enacted, and in force, concerning the observation of the Lord's day, be carefully put in execution. And that no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business or work of their ordinary callings, upon the Lord's day, or any part thereof, (works of necessity and charity alone only excepted,) and that every person being of the age of fourteen years or upwards, offending in the premises, shall for every such offence forfeit the sum of 5s. : and that no person or persons whatsoever shall publicly cry, show forth, or expose to sale, any wares, merchandizes, fruit, herbs, goods or chattels whatsoever upon the Lord's day, or any part thereof, upon pain that the person so offending shall forfeit the goods so cried or shown forth, or exposed to sale." The act proceeds to prohibit any "drover, horse courser, waggoner, butcher, or higgler, or their servants, from travelling, or coming into his inn or lodging, on the Lord's day," under a penalty of 20s. for every offence ; while it attaches a penalty of 5s. to the offence of using, employing, or travelling upon the Lord's day, with

^m The 13th of Car. II. c. 9.

any "boat, wherry, lighter, or barge, except it be upon extraordinary occasion, to be allowed by some justice of the peace of the county, or head officer, or some justice of the peace of the city, borough, or town, where the fact shall be committed." Such being apparently the persons then considered best qualified to judge of the reasons for relaxing a regulation of an ecclesiastical nature. The payment of the penalty incurred, is directed to be enforced by distress; and if no sufficient distress can be found, the "party offending is to be set publicly in the stocks, by the space of two hours." Such are the stringent and wide-sweeping regulations of this act as to labour on the Lord's day. However it makes an exception in favour of dressing meat in families, and "dressing and selling meat in inns, cooks' shops, or victualling houses, for such as cannot otherwise be provided;" and also for the crying or selling of milk before nine of the clock in the morning, or after four of the clock in the afternoon," and it protects all persons from being impeached, "prosecuted, or molested," for any offence mentioned in it, after the lapse of ten days from its commission. On the other hand, it takes away the right of persons travelling on the Lord's day, and being thereon robbed, to bring an action against the hundred where the robbery took place, for the loss sustained: but it still leaves on the hundred the duty of making pursuit after the robbers, on

Or the use of boats, &c.

With certain exceptions.

Penalty by which the observance of the act enforced.

Exception made in favour of dressing meat,

and selling milk.

Limitation of the time of prosecution.

Action against the hundred for robbery on Sunday, taken away.

notice of the robbery being given them, according to a statute of Elizabeth;ⁿ under the penalty of forfeiting to the crown "as much money as might have been recovered against the hundred by the party robbed, if this law had not been made."^o

A. D. 1677.

A.D. 1694.
5 Will. III.
exception in
favour of
hackney-
coaches.

Extended
A.D. 1710,
9th Anne.

Since the period of the passing of this act, the disposition of the legislature has rather been to relax the stringency of its provisions than to draw them tighter. In the reign of William the Third, it was found that "the restraint imposed by the 29th of Charles the Second upon the standing and hire of hackney-coaches upon the Lord's day," was undesirable, "as well in order to the observation of that day as otherwise."^p The commissioners for the regulation of them were, therefore, empowered to appoint 175 and no more, to ply, stand, and drive on the Lord's day within the weekly bills of mortality only, so as the whole number of 700, to which they were then limited, might equally participate in the benefits, and bear the disadvantages resulting from the permission. A few years afterwards it was judged expedient to abolish the restriction altogether, and permit "any licensed hackney-coachman or his driver, or any chairman, to ply and stand with their coaches and chairs, and to drive and carry the same respectively on the

ⁿ 27 Eliz. c. 13.

^o 29 Charles II. c. 7.

^p 5 Will. III. c. 22.

Lord's day, within the limits of the bills of mortality."^q

Another act of William the Third^r takes into its paternal care the watermen of the Thames, and those liege subjects whose avocations might lead them on the Lord's day to be passing that river. "Whereas," it says, "great numbers of idle and loose watermen and boys do work on the Lord's day, commonly called Sunday, and exact large prices from passengers, whose necessary occasions oblige them to pass and repass the river Thames, and generally spend such gains in drunkenness and profaneness the succeeding week: For the prevention thereof, and to the end that what shall be got thereby may be applied to the relief of aged and maimed watermen and lightermen, and their widows;" it shall be lawful for the rulers of the company of watermen to appoint forty watermen to ply and work on the Lord's day between Vauxhall and the Limehouse, for the carrying of passengers at 1*d.* a-head. The receipts, after paying the wages of the watermen employed, were directed to be applied to the purposes mentioned above. The accountability of the watermen employed, for their earnings, was enforced by a penalty of forty shillings on default in accounting.

A.D. 1700,
11 Will. III.
Exception in
favour of wa-
termen em-
ployed on fer-
ries between
Vauxhall and
the Lime-
house, for
certain cha-
ritable ob-
jects.

^q 9 Ann. c. 23, s. 20. The enactment is repeated by 1 & 2 Will. IV. c. 22, s. 37.

^r 11 & 12 Will. III. c. 21, s. 13.

A. D. 1629,
statute of
Charles II. as
to using boats
on the Lord's
day, and the
last men-
tioned statute,
repealed.

The relaxation thus made in the prohibition contained in the statute of Charles against the employment of watermen upon the Lord's day, continued, —with no other alteration than a restriction upon the number of persons who might be carried in such ferry-boats, whom a subsequent act of parliament limited to eight,^s—until a recent period, when that statute, “so far as it prohibits persons from employing or travelling on the Lord's day, with any boat, wherry, lighter, or barge, or imposes any penalty or punishment for so doing,” was totally repealed by an act^t which repealed also the statute of William the Third, directing the establishment of Sunday ferries, and the last-mentioned statute of George the Second.

But provision made for the establishment of ferries between Chelsea and Bow Creek, for the same objects.

But the new act contains clauses intended, in part, to restore what it thus swept away. It empowers the constituted authorities of the company of watermen to appoint at their discretion, in any places between Chelsea and Bow Creek, except within 200 yards of Vauxhall Bridge, watermen “to ply and work on the river Thames on every Sunday,” and carry over passengers at a fare of *2d.* a piece; the funds thus raised being directed to be applied for the same purposes as are mentioned by the act of William.^u For the general prohibition

^s 10 Geo. II. c. 31, s. 8.

^t 7 & 8 Geo. IV. c. lxxv. s. 1.

^u *Ibid.* ss. 42, 43.

against plying on a Sunday, under which the effectiveness of the former act could be secured, this act substituted a prohibition to any other watermen to ply so near the appointed ferry places as might interfere with the vocation of the ferrymen : while it fixed a penalty not exceeding 5*l.* on the demand of more than the appointed fare ; and one not exceeding 40*s.* on the refusal of the waterman to account for his profits, both enforceable by distress, on complaint made within thirty days after the offence.^x The number of passengers is fixed by the size of the boat.^y The act also recognizes and regulates certain customary Sunday ferries at 1*d.* a-head, in the parishes of St. Margaret and St. John, Westminster, of which the profits were similarly applied. And to raise a like fund at Gravesend, it empowers the justices of that place to license watermen to “carry goods or passengers for hire” on Sunday ; securing their monopoly, by prohibiting any waterman, except specially licensed by the justices, from plying there on that day, under a penalty not exceeding 5*l.* : and enforcing the accountability of such watermen as are employed on account of the fund, by regulations similar to those already mentioned.^z We return to the statutes of an earlier period.

And similar provisions in respect to watermen at Gravesend.

The legislature, which thus showed itself attentive to provide for the convenient transportation

^x 7 & 8 Geo. IV. c. lxxv. ss. 42, 43, 74, 86, 89.

^y Ibid. s. 37.

^z Ibid. ss. 47—50, and 97.

A. D. 1698,
10 Will. III.
exception in
favour of
selling
mackerel ;
and A.D. 1762,
2 Geo. III.
in favour of
fish carts tra-
velling.

of the bodies of the king's subjects from place to place on a Sunday, manifested also a laudable desire to prevent them from injuring their digestion by eating, out of regard for that day, stale fish. Thus a law of William the Third^{*} permits mackerel to be sold on Sundays, before or after divine service: a provision afterwards recognized by the 2nd of Geo. III.[†] This last act applies itself to the more effectual attainment of the same object, by preventing delays in the arrival of fish at the London market.

By its provisions, carriages employed for the conveyance of fish only, marked "Fish machine," and having the names and places of abode of the owners entered at the office of the Commissioners for licensing Hackney Coaches, and a number assigned to them by the commissioners, placed on some conspicuous place on the outside, are allowed to travel on Sundays and holidays on any road, whether laden or returning empty, without the driver incurring any penalty for so travelling therewith: the same exemption is extended to horses returning from drawing any such carriage, and the driver if riding thereon.[‡] That the benefit derived from the speedy arrival of the fish in these carriages might not be lost by delay in bringing their contents to market, the 11th section of the act orders, that all fish so brought to London shall

^{*} 10 & 11 Will. III. c. 24, s. 14. [†] C. 15, s. 12.

[‡] 2 Geo. III. c. 15, ss. 5, 7, 11.

be publicly exposed to sale, in some public market, the next morning at the furthest after it is brought. However, if such day should be a Sunday, the sale is to be deferred till the following Monday.

So far have the prohibitory clauses of the acts of Charles I. and II. been modified by more recent legislation. But the power of the law-makers has not always been exercised in this direction. In two points, laws of a later date than that of the last Charles have extended instead of limiting its operation. The first of these matters is the trade of baking :

“Many persons,” we are told by the 34th of Geo. III.,^a “exercising the trade of bakers, do, under pretence of being employed in works of necessity or charity, carry on their trade or calling upon the Lord’s day, and are employed therein a much greater part thereof than is requisite for such purposes.”

Further restrictions imposed, 34 Geo. III. A.D. 1794, on baking on the Lord’s day,

To prevent the continuance of this practice, the act provides that no baker “carrying on his trade within the city of London or twelve miles thereof,” shall, on any pretence whatsoever, “bake or expose to sale any bread, or rolls; or bake any meat, puddings, pies, or tarts; or in any other manner exercise his calling on the Lord’s day, except between the hours of nine and one; and then, in the case of baking meat, puddings, and pies, only if the per-

within the city of London and twelve miles thereof.

^a Cap. 61.

Subsequent
modification
of this law in
the 48 Geo.
III. A.D.
1808.

son requiring the baking thereof shall send the same to and from the place where such meat, pudding or pie is baked." Fourteen years later this act was somewhat modified by another,^b of which the provisions extend to journeymen as well as master bakers. By this last-mentioned law, the "setting, and superintending the sponge for the next day's baking," is excepted from the general prohibition of the performance, after one o'clock, of any acts included under the trade or calling of a baker; and a master or mistress baker are allowed to deliver to customers any bakings till half-past one: but the act is still more explicit than its predecessor in forbidding the delivery as well as the baking of any "meat, pudding, pie, tart, or victuals," at any but the prescribed hours. The 55th of Geo. III.^c extended the time during which the sale of bread, rolls or cakes might take place till two o'clock, provided the transaction took place within the bakehouse or shop. But this extension of privilege was revoked a few years afterwards,^d and the law restored to the state in which the 48th of Geo. III. left it.

Extension
of the time
during which
bread, &c.
might be sold
in the 55
Geo. III.
A.D. 1815.
Revoked
A.D. 1823,
3 Geo. IV.

Penalty fixed
by these acts
for offences
against them.

The penalty against the commission of the offence prohibited by these acts was fixed by the 34th of Geo. III. at ten shillings for every offence, or, in default of payment, imprisonment, for a

^b 48 Geo. III. c. lxx. s. 5.

^c Cap. xcix.

^d 3 Geo. IV. c. cvi.

period varying from seven to fourteen days. The 48th of Geo. III. raised the fine to twenty shillings for the second, and forty shillings for every subsequent transgression, and the costs of the prosecution; and in default of payment, subjected the offender to imprisonment for fourteen days and one month respectively; limiting the imprisonment for the first offence to seven days. The later acts reduce the fines by half, but leave the imprisonment unaltered.

Out of the penalty an allowance, not exceeding three shillings a-day, is permitted to be given by the magistrate before whom the conviction shall take place to the prosecutor, as a remuneration for loss of time and trouble. The remainder is to be applied for the benefit of the poor. Six days are allowed for bringing the offender to conviction.

Remuneration to prosecutor.

The operation of these acts was restricted to a circle of ten miles round the Royal Exchange.^e Places without these bounds, but where, under the acts for establishing an assize of bread,^f an assize had been set, were brought within the operation of similar provisions early in the beginning of the present century;^g by an act which, however, excepted "sales made to travellers in cases of urgent necessity," and fixed as the hours when the bringing articles to be baked was prohibited, "the time of divine service, in the parish, hamlet or

Time allowed for prosecution.

These acts limited to ten miles from the Exchange; but the law extended, by 50 Geo. III. A.D. 1810, to places without that limit where an assize set, with some little differences.

^e In the earlier acts it is twelve miles.

^f Referred to in the acts cited upon the present subject.

^g 50 Geo. III. c. 73.

place where the bakehouse shall be situate, or within one quarter of an hour of the time of the commencement thereof." The penalties upon disobedience were the same as those inflicted by the 3rd of Geo. IV. upon similar acts in London, except that the amount of imprisonment for offences after the third was limited to twenty-one days; and the time for proceeding confined to two days after the offence.

And in 59
Geo. III.
A.D. 1819, the
last regula-
tions extend-
ed to places
where no
assize set.

Provisions similar to the last mentioned, in all respects, except that the first offence might be punished by fourteen, and the second by twenty-one days' imprisonment, were extended by the 59th of Geo. III.^h to those places where no assize of bread was set, and which fell without the boundary of ten miles from the Exchange. However, a few years later, this and the preceding act were repealed by a statute,ⁱ which abolishes also the assize of bread, and assimilates the law as to baking on the Sunday in all respects to that applied by the 3rd of Geo. IV. to places within the circle of ten miles from the Royal Exchange.

In 5 & 6
Will. IV.
A.D. 1836, the
same regula-
tions applied
to town and
country.

The second of the two points above referred to, is the capture of game. By the 13th of Geo. III.^k any person who, on a Sunday or Christmas-day, in the day should "knowingly and wilfully take, kill or destroy any hare, pheasant, partridge, heath or moor game; or use any gun, dog, net or engine

Prohibition
against kill-
ing game on
Sundays or
Christmas-

^h Cap. 36; re-enacted by 1 & 2 Geo. IV. c. 50.

ⁱ 6 & 7 Will. IV. c. 37, ss. 1, 14.

^k Cap. 80, ss. 6, 7.

for such purpose," was liable, for the first offence—<sup>day, in
13 Geo. III.
A.D. 1773.</sup> to a penalty of not less than 10*l.* or more than 20*l.*; for the second, to one of not less than 20*l.* or more ^{Penalty} than 30*l.*; and for the third, to one of 50*l.*; or—to imprisonment for a period varying from six to twelve months, at the discretion of the justices in quarter sessions; and a public whipping at its termination, if they thought fit to order it. The prohibition remains, but the severity of the punishment by which its observance is enforced, has been considerably mitigated.¹ It is now, for every offence, "such sum of money not exceeding 5*l.*," <sup>is mitigated
by the pre-
sent act,
1 Will. IV.
A.D. 1831.</sup> as to the justices before whom the conviction shall take place may seem meet;" together with the costs of the conviction: and in default of payment, imprisonment for any term not exceeding two calendar months; with or without hard labour at the discretion of the justices. On the other hand, the time for prosecution, which by the former act was limited to one month, by this is extended to three.

Other recent acts follow the example of the one last cited, by including within their prohibitions certain days besides the Sunday. Thus modern statutes extend to Good Friday, Christmas-day, and every day appointed by the crown as "a fast or thanksgiving," the custom of merchants, by which bills of exchange or promissory notes due on Sun-

<sup>Bills due on
certain days
made payable
the day be-
fore, A.D. 1800.</sup>

¹ By the 1 & 2 Will. IV. c. 32, ss. 3 and 38. This act expressly includes grouse, black game, and bustards, in its protection.

day, were payable and capable of being protested the day before.^m

Sale of wine,
&c. thereon,
restrained,
A.D. 1830.

On the same days, another act restrains any licensed victualler, within the metropolitan police district, from opening his house before one o'clock for the sale of "wine, spirits, or other fermented or distilled liquor," except for refreshment to travellers. And on these days the same act empowers the Commissioners of the Police to regulate the route of carriages, or persons driving cattle near "any church, chapel, or place of public worship," during the time of the divine service; and provides that each breach of their orders shall be deemed a separate offence.ⁿ

And public
thoroughfares
regulated.

Public meet-
ings for any
secular busi-
ness on the
Lord's day
prohibited,
A.D. 1833.

One recent law, however, is confined to the Sunday. "Whereas," says this statute, "the profanation of the Lord's day is greatly increased by reason of certain public meetings usually or occasionally held thereon;" be it enacted, "that every meeting of any vestry or corporation, ecclesiastical or civil, or of any public company, whether for the election of officers or any other secular affair; and every other meeting of a public or secular nature," which "is or shall be required to be held on the Lord's day, shall be held on the next preceding Saturday, or the Monday next following."^o

^m 7 & 8 Geo. IV. c. 15, and 6 & 7 Will. IV. c. 58. However, the custom of merchants had long before applied the rule to Christmas-day; and Good Friday had been brought within it by 39 & 40 Geo. III. c. 42.

ⁿ 2 & 3 Vict. c. 47, ss. 42, 49. See page 270 for the reason of the last provision.

^o 3 & 4 Will. IV. c. 31.

CHAPTER VI.

LAWS AS TO AMUSEMENTS IN HOLY SEASONS.

Greeks, Romans, and Jews—Christians—Change in their feelings—Shows on Sundays and other Holy Seasons—Laws of the Emperors—Councils of Carthage—of Trullo—Marriages and Festivals in Lent—Councils of Laodiceæ—of Lerida—Constitution of Nicholas I.—Council of Seligenstadt—Decretals—Constitutions of Eghert—Council of Enham—Reformation—Amusements in Holy Seasons, especially the Lord's Day—Capitularies—Constitutions of Nicholas I.—of Theodulphus—Council of Clovishoff—Canon under Edgar—Council of Enham—Laws of Canute—of Richard II.—of Henry IV.—Licence granted by Elizabeth—Book of Sports—Laws of Charles I.—of Charles II.—of George III.—General Observations.

THUS, then, have we concluded our review of the laws relating to the prohibition of labour on Sundays and other days consecrated as festivals, or set apart as seasons of self-discipline and mortification. It remains, according to our proposed plan, before we enter upon the examination of the decisions by which the present law of England, as to what may not be done upon such days, is expounded and fixed, to trace, from our starting-point in the first centuries of Christian legislation down to our own time, the laws relative to amusements at those seasons.

Laws against
amusements
in sacred sea-
sons, un-
known to
Greek or Ro-
man legisla-
tion,

or to the
Jews.

No precedent from the earlier Greek or Roman regulations meets us here, as it did in our former inquiries. All example derived from them is of a contrary character. If business was suspended, and labour ceased on days of religious solemnity, those solemnities were themselves attended by whatever exhilarates the bodily senses; music and dancing, feasting and libations, were their regular accompaniments.^a The great Roman legal holidays were occasioned by the celebration of the public games. Even the Jews, strict as was their keeping of the Sabbath day by abstinence from labour, had by no means a similar feeling respecting the abstinence from bodily pleasures. In the New Testament we find allusion to entertainments given on that day, by those who were most scrupulous in its observation.^b By the early Christian writers, their banquets and dances upon the Sabbath are brought up against them as a reproach.^c And, completely

^a *Seu te in remoto gramine per dies*

Festos reclinatum bearis

Interiore notâ Falerni, &c.—Hor. Car. ii. 3.

^b Luke, xiv. 1—24. See the remarks upon this passage in note ^h, page 90.

Amusements
of the Jews
on the Sab-
bath blamed
by the Chris-
tian Fathers.

^c Thus St. Augustine charges them with spending their Sabbath in a sort of rest, which “is nothing but a corporal laziness, languid, vain, and luxurious; for they rest only for trifling vanities, and when God commands them to observe the Sabbath, they exercise the Sabbath in such things as God forbids.” Our rest, he says, is “from evil works; their rest for bad works, for it is better to go to plough, than, as they do, to dance.” So Ruffi-

religious as was the character of the great festivals, of which the law enjoined the annual celebration, to "rejoice before the Lord their God" is one of the express directions of the law appointing them.^d

But very different was the feeling embodied in the Christian religion; that Divine utterance out of the profoundest depths of humanity; that quiet sanctuary of holy sorrow and unrepining endurance.^e

Difference of feeling on this subject among the Christians; and its origin.

Joys indeed it had of its own, but not bodily joys; not the feast, the dance, or the song. It spoke indeed of peace, but it was the peace of the forgiven penitent, of those who were "weary and heavy laden." The qualities of mind which conduce to gaiety and

nus accuses them of spending "their new moons and their Sabbaths in dancing, singing, and lascivious banqueting;" and Chrysostom, with "serving their belly, indulging drunkenness, stuffing themselves with meat and delicacies, and spending their time in banquetings and pleasures." In like manner, Theodoret and Prudentius allude to their "lascivious dancing" on the Sabbath. See Bing. xx. 2, 4.

^d "And thou shalt keep the feast of weeks unto the Lord thy God with a tribute of a free-will offering And thou shalt rejoice before the Lord thy God, thou and thy son, &c. Thou shalt observe the feast of tabernacles seven days after thou hast gathered in thy corn and thy wine. And thou shalt rejoice in thy feast, thou and thy son, &c." Deut. xvi. 11—14. The joyous character of these festivals in later times we may gather from Hosea, ii. 11: "I will cause also all her mirth to cease; her feast days, her new moons, and her Sabbaths, and all her solemn feasts."

^e Compare Wilhelm Meister, *Wanderjahre*, book ii. ch. 1 and 2, vol. 24, of Goethe's *Sämtliche Werke*, p. 15 and 27.

merriment, did not find in it any development. It did not encourage the brilliant dreams of the imagination, or the quick play of a lively fancy, any more than it did the searching investigations of the intellect, or the daring exploits of active enterprise. Its sphere lay in a region more universally accessible, and, therefore, more essentially human : for its home was in the heart ; the pitying, tender affections ; and thus was it as suitable for the lowly as the noble, the ignorant as the wise. But while it pronounced as blessed " those that mourn," those who are " poor in spirit," it seemed to shut out from its view the opposite dispositions. Sympathy might, indeed, induce the Christian to " rejoice with those that rejoice ;" but his own rejoicing was to be " in the Lord ;"^f in Him, who on earth had known only want, contempt, suffering, crucifixion ; and who, though now removed from his followers, was speedily to return with his holy angels to close this earthly scene, and introduce that state in which " old things should pass away, and all things should become new." How then could his disciples feel at home enough upon the earth, to admit to any place in their affections such pleasures as earth can afford ?^g

^f Phil. iii. 1, iv. 4.

^g As to the belief in the immediate approach of the end of the world, in the first Christian centuries, see p. 16. It should be observed that we have taken the Christian principles, as they have

Time, indeed, gradually softened down to the majority of Christians this opposition of bodily and spiritual pleasures, of earthly and heavenly pursuits. Is gradually softened down by the progress of time. Ages rolled away, and the "last time" still receded before them. Christian kings arose, with pomp and earthly gaiety, as their natural concomitants. Christian men built and planted, bought and sold, and looked to transmit their possessions to their children, as their Greek and Roman predecessors had done before them; and as they thus practically made themselves at home on the earth, they rejoiced as those who were at home. When actively engaged in the pursuits of life, men felt, for the most part, that profound, wide-reaching, rich in blessings, imperishable, as the unmixed Christian principle was, it yet did not comprehend all that lay in man. Thought, imagination, fancy, enterprise, the elements of Greek and Roman excellence—of the male, as contradistinguished from the female character,^h vindicated their right to existence. And, in actual life, good men have,

in fact manifested themselves; not as they may be conceived to have dwelt in the ideas of their Divine Author.

^h By which, of course, we do not mean to say that both elements do not co-exist in the male and in the female. But while the man can love, and pity, and forgive, and the woman can think, and imagine, and act, the affectionate gentle element seems to be more especially characteristic of the female disposition; the penetrating, brilliant, active, more especially characteristic of the male.

long since, very generally reconciled that discordance between the purely Christian and the purely Heathen view of life, between the life on the earth and the life above the earth, which yet so often has retained its place among the theories, in which they professed and thought themselves to believe. The purely Christian principles, instead of being the exclusive possessors of their minds, have been admitted to a partial possession only, conjunctively with those others, which, more or less fully, were embodied in the Jewish and Heathen conceptions of life. And, as a natural consequence of such modes of thought, that which charms the senses has, in part, resumed its position as a worthy accompaniment to religious worship; in part, has been allowed to claim a place, on the days consecrated by religious reverence to a freedom from labour, as a sequel to the more solemn acts of devotion.

Yet still retains its position,

both among the Roman Catholics

And yet, the feeling of an opposition between the two principles has still kept its ground. Among those bodies of Christians who have adhered most closely to the ancient traditions, if the claims of the senses are recognized in the act of worship, and thoughts of festivity are associated with the recurring festivals; on the other hand, the mortification of the body holds a high place among Christian virtues; and the perfect life is placed in the realization here, as far as may be, of the supposed state of

heavenly blessedness ; in the renouncing every pursuit which can interfere with the constant round of prayers and praises, except indeed the performance of works of charity.

While among those societies of Christians who and the Protestants. have drawn back from such a development of Christian principles—to whom it has appeared, in the language of a modern poet, that

We need not bid, for cloistered cell,
Our neighbour and our work farewell ;
Nor strive to wind ourselves too high,
For sinful man beneath the sky ;¹ —

the same feeling has manifested itself in another form. We find amongst them a tendency to protest against certain joyous amusements on all occasions, and for all men. So that, though activity in the business of the earth, and the accumulation of earthly wealth, and the acquisition of earthly knowledge, are commonly looked upon among them as occupations even praiseworthy, provided they do not engross all our energies ; many still make it a point of conscience to refuse the same allowance to the pleasures of the earth, and regard the mention of these, in any near connection with religious worship, as an unmixed profaneness.^k We proceed to

¹ Christian Year. Morning hymn.

^k A feeling probably due, in a considerable degree, to the absence of any stated seasons of self-denial among Protestants ; in which this necessity of the highest religious feeling may find

trace the degree in which the feeling, thus peculiar to Christianity, has manifested itself in the institutions of Christian states.

No prohibition of amusements by Constantine, A.D. 321.

The first law of that nature, in A.D. 386, under Gratian, Valentinian, Theodosius, relating to Sunday only.

The same prohibition extended to other days by a law, A.D. 389, of Valens, Theodosius, Arcadius;

and by Justinian, A.D. 527 to 565.

Canon of the council of Carthage, circa A.D. 408, as to shows at Easter.

No mention is made of amusements in that law of Constantine which first forbade the carrying on of forensic proceedings on the Lord's day. The earliest prohibition of this kind on record is of nearly seventy years' later date; but alludes to a law of somewhat earlier epoch to the same effect. "Let none," says Theodosius I., "transgress the decree we lately made, that no one should, on the day of the sun, exhibit shows to the people, or mix up the divine worship with the slaughter of animals."¹ Three years later, in that edict, which we have already noticed, as re-arranging the judicial holidays, in a manner suited to the altered feelings of the majority of his subjects, the Emperor extended the same prohibition to the seven days before and after Easter; to which Justinian afterwards added Christmas-day, the Epiphany, and the days of the commemoration of the Apostles.^m

But the law of Theodosius would seem not to have been very precisely observed; for a few years after its date, one of the canons of the African Church mentions, as an object to be desired,—that

satisfaction. See some good remarks on this subject in the Christian Remembrancer for 1844, p. 536.

¹ Confectâ solemnitate.—Cod. Theod. xv. 5, 2.

^m 3 C. 12, 7; Cod. Theod. ii. 8, 11, Omnes dies.

the giving of theatrical shows should be prohibited on the Lord's day, and the other glorious^a days of the Christian faith, especially during the eight days after Easter, when the multitude was fonder of frequenting the hippodrome than the churches;—that the time fixed for the races should be changed whenever it interfered with this holy season;—and that at all events none of the Christians should be required to attend such sights. The prohibition thus sought for followed a few years later, and extended to the whole period between Easter and Whitsunday, and the eight following days, during which those newly-baptized at the latter festival continued to wear their white robes.^o During this time, it is enjoined, “all delights of the theatre and the circus shall be denied to the people throughout all the cities of the empire; that the whole minds of all Christians and believers might be occupied in the worship of God; and if any are still entangled^p in the mad impiety of the Jews, or the foolish error of Paganism, let them know that there is one season for prayers, and another for pleasures; and lest any should think himself urged, by the overpowering pressure of his duty to

Further prohibition,
A.D. 425, under Theod. II.
and Valentinian.

^a φαιδραϊζ. Labbeo, iii. 767, c. 28; Bal. Can. Apost. 688, c. 63.

^o C. Theod. xv. 5, 5.

^p Detinentur.—Ibid.

the emperor, to pay honour to our Majesty,^q and that if he did not busy himself with the games,^r he should draw upon himself our serene displeasure, by displaying less devotion to us than is wont to be shown, let it be clearly understood that the human race will exhibit the greatest deference to our excellence,^s when the world is most reverently intent upon the virtues and universal claims of the omnipotent God." Such was the modest language of the successors of Augustus fifty years before the last remains of imperial power disappeared from Italy, through the invasion of the northern tribes, and Odoacer occupied the throne of the Cæsars.

Odoacer de-
throned Au-
gustus
A.D. 476.

Canon of the
fourth council
of Carthage,
A.D. 436,
against fre-
quenting
shows, to the
neglect of the
churches.

Law against
shows on a
Sunday,
A.D. 409, by
Leo and An-
themius.

But the power of the emperors of that age did not correspond to the magnificence of their assumptions, and the ancient habits of the population were not so easily altered. Eleven years after the date of the last-cited law, we find the fourth council of Carthage ordering, that the man who, "on a high day,^t should neglect to attend the solemn assembly of the church, and frequent the shows, be excommunicated." And thirty-three years later we again

^q Nequis existimet in honorem Numinis nostri, veluti majore quâdam imperialis officii necessitate compelli.—Ib.

^r Usually given in honour of the emperor's birthday.

^s Tunc maxime mansuetudini nostræ ab humano genere deferatur, cum virtutibus Dei omnipotentis, ac meritis universis, obsequium orbis impenditur.—Ib.

^t Die solemnî.—Can. 88. Labbeo, iii. 955.

find the imperial authority enjoining, but this time in reference to the Lord's day only, that "no one, breaking in upon the rest of this venerable day,^a be entangled by obscene pleasures. The scenes of the theatre, the contest of the circus, and the pitiable spectacle of the wild beasts, shall not be allowed to assert their claims; and if the day of the birth or accession of the emperor shall fall on such a season, its celebration shall be deferred." The penalties, by which the observance of this enactment was enforced, have been mentioned before.^x

The law of Valens and Theodosius, and this last law of Leo, were embodied, with some additions, mentioned above, into the code of Justinian. Yet the games of the hippodrome appear to have been kept at Constantinople, long after the date of his legislation, during the season when, according to the law of Theodosius, they ought to have been suspended; viz. during the eight days following Easter. "These days," says a canon of the council in Trullo,^y "the faithful should spend in holy leisure in the churches:^z in psalms, and hymns, and spiritual songs: exulting in Christ, and keeping the feast, and banqueting^a on the holy mysteries:

Certain of these laws embodied in the code of Justinian.

But appear, from a canon of the council in Trullo, A. D. 692, not to have been strictly observed.

^u Religiosi diei otia relaxantes.—3 C. 12, 11. ^x At p. 20.

^y Can. 66; Labbeo, ii. 622. This is also known as the sixth general council.

^z Ἐν ταῖς ἁγίαις ἐκκλησίαις σχολάζειν δεῖ ἀπαρλείπτως τοὺς πιστοὺς.—Ib.

^a Κατατρύφοντας.—Ib.

for thus shall we be risen with Christ, and lifted up on high with him. In these days, therefore, let not the games of the hippodrome, or any other popular spectacle,^b by any means be held."

Thus far have we considered the laws directly relating to an abstinence from public amusements. But the ecclesiastical canons went still further, proscribing at certain periods such acts of a more private nature as are usually attended with joyful accompaniments. Thus, throughout the season of Lent, the council of Laodicæa forbade the celebration of marriages:^c as inconsistent with the feelings suited to that time of self-denial. Indeed, even the sacred festivities of the commemoration of the Martyrs, were, by another canon of the same council, directed to be kept on the Sabbath or the Lord's day only, during that season;^d these being days on which, as we shall see in a subsequent part of this treatise, the fast of Lent was, in the Eastern Church, suspended. The same council forbade the consecration of the Eucharist during this season, except on those days, that the fast might not be broken.^e

With these canons we close our review of the legislation of the Roman empire upon our present subject; and turn, once more, to the laws of the

Canon of the council of Laodicæa, A. D. 364, forbidding marriages in Lent;

and the prohibition extended even to the commemoration of the Martyrs,

and the consecration of the Eucharist.

^b *ἀγῶνις θία*.—Can. 66.

^d Can. 51; *ib*.

^c Can. 52; Lab. ii. 563.

^e Can. 49; *ib*.

states which arose upon the ruins of that Empire in the West. Here however our researches have been less productive. Upon the subjects embraced by the canons last quoted, several regulations are indeed to be found, and some going beyond the enactments of the council of Laodicæa. Thus the council of Ilerda^f is said to have prohibited the celebration of marriages from Septuagesima Sunday to the octave of Easter, and includes in the same prohibition the further periods of three weeks before the festival of St. John the Baptist;^g and the days intervening between Advent and Epiphany.^h Pope Nicholas I., in his letter to the Bulgarians, by Nicholas I. A. D. 832 confines indeed the period of prohibition to Lent; to 867; referring them however to the canonical law upon the subject, as it would be expounded by their bishop for more full information. But as he, more than once, speaks of the necessity of feeding them with milk, as babes in Christ, and not laying upon them too heavy a burden, it may perhaps be thought that he somewhat modified his requirements in this matter, to spare his new converts.ⁱ At all events the regulation of the council of Lerida was repeated by the council of Seligenstadt;^k and forms part of that digest of the canon law, and by that of Seligenstadt, A. D. 1022;

^f Or Lerida.

^g 24th of June.

^h Lab. viii. 616.

ⁱ C. 48; Labbeo, xv. 419; cf. C. 47.

^k Lab. xxix. 397, C. 3, adding the ember weeks, and the eves of solemn feasts.

and by Clement III.
A. D. 1187 ;
but qualified
as to the
Sunday and
Saturday in
Lent.

A. D. 740,
constitution
of Archbishop
Egbert on
this point.

A more extensive
prohibition, A. D.
1000, by the
council of
Enham in
England.

known as the *Decretum Gratiani*;¹ and in respect to the two first periods is recognised by Pope Clement the Third.^m The prohibition is however somewhat qualified by another canon admitted by Gratian, which, at least during Lent, allows of marriages on the Sabbath, and the Lord's day.ⁿ

In England, so early as the middle of the eighth century, the evening of the Lord's day, the Wednesday and Friday, and the season of Lent, are included by Archbishop Egbert among the seasons when men ought not to marry.^o Two centuries later, a canon of the council of Enham comes near to those cited above; enumerating, among the days when the celebration of marriage was not allowable, "all solemn festivals; and the fasts of the four seasons; and the time between the advent of the Lord and the octave of Epiphany; and that between Septuagesima and the fifteenth day after Easter."^p We have not discovered any other English canon or law upon this subject anterior

¹ C. 33, iv. 10, Non oportet.

^m X. ii. 9, 4, Capellanus tuus non oportet. He directs that the latter of these periods shall be taken to mean Ascension week, and the two following.

ⁿ C. 33, iv. 8, Non licet.

^o Cons. 106; Spel. Con. i. 267.

Qui dominica nocte nupserit, vii. dies pœniteat.

Qui quarta vel sexta feria, ii. dies pœniteat.

Qui quadragesimâ ante pascham, i. annum pœniteat.

^p Can. 18; Spel. Con. i. 518.

to the Reformation. Restrictions upon marriage at certain seasons were still considered as of force in the reign of Elizabeth; nor, though practically disregarded, do they appear to have ever been formally repealed.^q

Prohibition
disregarded
since the Re-
formation.

So much as to the first canon cited by us from the council of Laodicæa. The second,^r relating to the celebration of the days of Martyrs, is found unaltered in the Decretum Gratiani: though the permission to celebrate them on the Saturdays, as well as the Sundays during the season of Lent, seems hard to reconcile with the regulations by which the Western, in opposition to the Eastern Church, insisted on the former day being kept as a

The prohibi-
tion against
celebrating
the days of
Martyrs in
Lent,
adopted in
the West.

^q Several attempts to repeal the old canons, formally, were made, but without success, in the reign of Queen Elizabeth. Thus in the 17th year of her reign, a bill was brought into Parliament, declaring marriage lawful at all times. In 1562, a proposal was offered to convocation, that it shall be lawful to marry at any time of the year, without dispensations, except upon Christmas day, Easter day, and the six days previous, and upon Whit-Sunday. And in 1575, one of the articles presented by the convocation to the Queen, but by her rejected, was, that marriage should be declared to be solemnizable at all times of the year. The 62nd canon published in 1 James I. provides only that no marriages be made at unseasonable times of the day; though its silence seems to imply that they may be solemnized at any time of the year.—Gib. Cod. ii. 430. Licences to marry in prohibited times continued to be granted by the Archbishop of Canterbury up to the thirteenth of Elizabeth.—Wilk. Con. iv. 222.

Unsuccessful
attempts to
abrogate the
old law for-
mally, A. D.
1576.

A. D. 1562.

A. D. 1575.

A. D. 1603.

^r 34, iv. 8, Non licet.

fast.^a We are not aware of any other canon of the Western Church upon this point.

Few laws in the Western States as to amusements in holy seasons.

But if from these matters, which are rather questions of canonical discipline, we turn to the general subject of the prohibition of amusements during holy seasons, a great scarcity of regulation meets us among the Western States. Numerous as were the laws, ecclesiastical and civil, passed in the period intervening between the fall of the Roman Empire and the eleventh century, respecting the observance of the holy seasons of the Church by the cessation from judicial proceedings, and the abstinence from servile labour, we have discovered two only, of foreign origin, respecting the abstinence from amusements. "Let all the faithful," say the capitularies of the Frank emperors, "observe with reverence the Lord's day, on which the Lord arose. For if the Pagans in memory of their gods, and out of reverence for them, observe certain days, and the Jews, after a carnal manner, keep their Sabbath, much more is this day to be held in honour by Christians. On that sacred day, therefore, let not men busy themselves with idle stories, and talkings, or songs, or dances, standing at the corners of the streets, and in the open places, as they are wont."^t

Law of the Frank Emperors as to amusements on the Lord's day.

More explicit on this subject is our second

^a See *infra*, chap. viii.

^t Cap. vi. 205 ; Van Esp. i. 644 ; Lab. xv. 640.

authority, the often cited letter of Pope Nicholas the First to the Bulgarians. It is strictest as to seasons of fasting. Hunting in Lent it altogether prohibits; assigning the somewhat curious reason, that, "in hunting, we take nothing but flesh; but in the season when we ought to follow after nothing fleshly, it is becoming to abstain from the capture of flesh." Besides "the more closely we attend to the divine service, the further should we recede from all destructive pleasures; and the more so, as the sacred history does not point out hunting to have been practised by any but reprobate persons."^a Banquets also, and games,^x the Pope expressly interdicts in the same season, and on all seasons of fasting; when men "ought to be more fully and earnestly intent on prayers and abstinence, and all that promotes penitence:" while of games he intimates, that not only in Lent, but at no time, were they proper for Christians, "though on the Bulgarians, whose weakness did not yet allow them to come up into the mount," he does not think fit to impose so strict a law.^y

Letter of
Nicholas I.
to the Bul-
garians, A. D.
852 to 867,
forbids
hunting in
Lent;

so banquets
and games.

His Holiness does not indeed expressly prohibit such amusements on festivals. But his feeling about them is sufficiently manifested, by the declaration contained in the direction for the ces-

As to amuse-
ments on fes-
tivals.

^a E. g. Esau and Nimrod, C. 44; Labbeo, xv. 418.

^x Joci.—C. 47; ib. 418.

^y C. 37; ib. 418.

sation of labour on such days. This was appointed, he says, to allow to Christian men greater liberty of "coming to church; of giving their minds to psalms and hymns, and spiritual songs; of having leisure for prayer; of offering their oblations; of joining in communion with the commemorated saints;^a of rising to the imitation of them; of attending to the divine oracles;^a of ministering alms to the indigent. But, if any neglecting these things, should keep a vacation from prayer alone, and turn from his lawful toils to the vanities of the world, better would it be for him to labour upon the holiday, according to the precept of the blessed Apostle Paul, 'that he might have to give to those who stood in need.'"

Directions
not to eat be-
fore the third
hour on
festivals.

It is, probably, to the desire of preventing the practice of banqueting, at least in the early part of the holidays, that we may attribute the Pope's direction to his converts, not to eat before the third hour of the day on any of the great festivals; a regulation for which he cites the custom of the Fathers, some of whom, he says, would never eat on these days until vespers; and the words of St. Peter, on the day of Pentecost, "these men are not drunk, as ye suppose, seeing that it is but the third hour of the day."^b At least we find the habit of

^a *Memoriis sanctorum communicare*.—C. 11. Lab. xv. 407.

^a *Eloquiis*.

^b Cap. 60; Labbeo, xv. 422.

banquetings commencing with the early morning, adduced by Theodulphus, Bishop of Orleans, in his capitularies, as a reason for a similar exhortation, addressed by him to his flock, and accompanied by a regulation, directed against the performance of services, calculated to draw the people away from attending at the parish church, and thus give facilities for the growth of the practice complained of.^c

Similar injunction in capitularies of Theodulphus; A.D. 797.

Attendance at the parish churches.

But it is time for us to turn our attention to the institutions of our own country, which are somewhat more prolific upon this subject.

Towards the beginning of the ninth century, a canon of the council of Clovishoff, in enjoining the observance of the three days of rogations, directs, that "there be no mixture of vanities, as is the custom of some negligent or ignorant men, such as games and horse-races, and great banquets."^d

Council of Clovishoff, A.D. 811, as to rogation days.

This, indeed, relates to a time of fasting; but in the latter part of the next century we find a canon, of uncertain origin, going still further, enjoining on all to abstain, on festival days, from "songs, or the profane canticles of the Gentiles, and games and devilish mimics."^e In the same spirit the council of Enham, about forty years afterwards,

Canon, circa A.D. 970, as to songs on festival days.

Canon of the council of Enham, A.D. 1009, against hunting on the Lord's day,

^c Cap. 46; Lab. xiii. 1006; and cf. another cap. at p. 1008.

^d Can. 16; Spel. Con. i. 249.

^e Can. under Edgar, 18. Spel. Con. i. 450,—subsannationibus diabolicis.

included hunting among such pursuits as should be carefully abstained from upon the Lord's day.^f

enforced by
the laws of
Canute, circa
A.D. 1032.

And this practice is among those forbidden by the laws of Canute.^g

A.D. 1388,
certain games
forbidden to
the poorer
classes on
Sundays ;

In the reign of Richard the Second a law, which, however, seems to have been more of a political than of a religious character, prescribes to servants of husbandry and artificers the use of bows and arrows on Sundays and holidays ; enjoining such to "leave playing at tennis, or football, cartes, dice, casting of the stone, and other importune games ;"^h and an act of Henry the Fourth enforced the observance of this law under the penalty of six days' imprisonment.ⁱ

and this law
enforced,
A.D. 1400.

But with these exceptions the English code, civil and ecclesiastical, ceases, until after the period of the Reformation, to offer to us any regulations upon this matter. Complaints indeed are sometimes, as we have seen, to be found, from high quarters, of the abuse of holy seasons, by the "tavern being more attended than the church, and banquetings and drunkenness abounding rather than tears and prayers :"^k but no laws were made to stop the alleged evil.

^f Can. 15 ; Spel. Con. i. 51.

^g Cap. 14 ; Spel. Con. i. 546.

^h 12 Rich. II. c. 6.

ⁱ 11 Henry IV. The execution of the law is sought to be secured by the imposition of a fine of 10s. on the superior, and 1s. 4d. on the inferior officer, if guilty of neglect in executing it.

^k See Islip's mandate, page 134.

The period after the Reformation was marked for some time by efforts on the part of those in power, somewhat curiously contrasting with those noticed by us as marking the earlier ages of Christian legislation. An opposition of the ruling authorities manifested itself against the increasing disposition among its subjects, to look upon all that partook of the nature of pleasure as a desecration of that one day to which, under the name, properly belonging to the Jewish festival on the Saturday, they were disposed to restrict the public observances of religion.

Opposition, after the Reformation, by the government, to the disposition to proscribe amusements on the Sunday.

Throughout the reign of Elizabeth the government took no general measures of this character. But of the feeling of the sovereign upon the subject, some proof is afforded us by the licence granted by her to a "poor man, fallen into decay," and having four children, to "use some plays and games upon three several Sundays, for his better relief, comfort, and sustentation, within the county of Middlesex." The games specified are—archery, leaping, running, wrestling, throwing the sledge, and pitching the bar; and all such other games as have at any time heretofore been licensed to be played.¹ The Stewarts went further.

In the year 1617 King James, on his return from Scotland, made a progress through Lancashire. Here he heard much of the numbers of

Publication by James I. A.D. 1617, of the Book of Sports.

¹ Wilk. Con. iv. 255.

Reasons assigned for its publication.

The prohibition of amusements on the Lord's day hinders the conversion of Roman Catholics;

makes the poorer people unfit for war;

“Popish recusants,” as the Roman Catholics were technically called, from their refusal to comply with the law by attending the services of the Church of England, and met with complaints of the harshness with which some of the authorities were disposed to check all the then popular amusements on the afternoons of the Sundays. The one grievance appeared to his Majesty to be connected with the other; and on his return to London, he expounded his views upon the subject,—to which he had already given utterance, verbally,—in a species of proclamation, commanded to be read publicly in all churches, and taken notice of by all persons in authority, and commonly known as *The Book of Sports*. “With our own ears,” says the King, “we have heard the complaint of our people, that they were barred from all lawful recreation and exercise upon the Sunday’s afternoon, after the ending of all divine service, which cannot but produce two evils. The one, the hindering of the conversion of many, whom their priests will take occasion thereby to vex, persuading them that no honest mirth or recreation is lawful or tolerable in our religion; which cannot but breed a great discontentment in our people’s hearts, especially of such as are peradventure upon the point of turning. The other inconvenience is this, that this prohibition barreth the meaner and commoner sort of people from using such exercises as may make their bodies more able for war, when we or our succes-

sors shall have occasion to use them ; and in place thereof sets up filthy tiplings and drunkenness, leads to drunkenness and discontent. and breeds a number of idle and discontented speeches in their ale-houses. For where shall the common people have leave to exercise, if not upon the Sundays and holydays, seeing they must apply to their labour, and win their living in all working days."

To remedy these evils, therefore, the King proceeds to declare it to be his pleasure, "that after the end of divine service, our good people be not disturbed, letted, or discouraged from any lawful recreation, such as dancing, either men or women, archery for men, leaping, vaulting, or any other harmless recreations ; nor from having of May games, Whitsun ales, and Morris dances, and the setting up of Maypoles, and other sports therewith used, so as the same be had in due time, without What amusements permitted ; impediment or neglect of divine service ; and that women shall have leave to carry rushes to the church for the decoring of it, according to their old custom." But "all unlawful games to be under what condition ; used upon Sundays only, as bear and bull-baiting, interludes, and, at all times in the meaner sort of people by law prohibited, bowling," are still to be what prohibited. accounted forbidden ; nor will his Majesty grant the "benefit and liberty secured by his proclamation to known recusants, such as will abstain from coming to church or divine service, being therefore

unworthy of any lawful recreation after the service, that will not come to church and serve God."

Further regulations to prevent abuse of the liberty granted.

Nor does he extend the privilege of joining in "the said recreations to any, though conform in religion, as are not present in the church at the service of God, before their going to the said recreations." And, probably with the view of ensuring the means of ascertaining whether this condition had been complied with,—each person is required to resort to his own parish church, and "each parish of itself to use the said recreations after divine service."

Opposition to the Book of Sports.

But the effort thus made by the King to stem the torrent of feeling, then setting in so strongly in a contrary direction among his subjects, was not attended with any very encouraging success. From the moment of its publication, the book met with no small opposition.^m Several bishops are said to have declared their opinion against it. Archbishop Abbot forbade it to be read at Croydon in the church there on the day appointed by the King; an offence against his spiritual supremacy at which the royal defender of the faith wisely winked. And the Lord Mayor of London commanded the king's own carriages to be stopped as they were passing through London on a Sunday: an act of boldness which called forth from James the exclamation, "That he thought there had been no more

^m Rapin's History of England, by Tindall, ii. 195, fol. ed.

kings in England but himself ;” and a warrant to the Lord Mayor, ordering him to let the carriages pass. The civic officer obeyed, with the answer, “ While it was in my power, I did my duty ; but that being taken away, it is my duty to obey :” and James, it is said, thanked him for the speech.

“ Out of a like pious care for the service of God, Charles I. causes the book to be re-published, and for the suppressing any humours that oppose truth, and for the ease, comfort, and recreation of his loving people,” Charles the First ratified and A.D. 1633 ; confirmed “ this his blessed father’s declaration ;” and “ the rather because of late, in some counties of his kingdom, he found that, under pretence of taking away abuses, there had been a general forbidding not only of ordinary meetings, but of the feasts of the churches, commonly called Wakes.” To check this act of arbitrary interference with the amusements of his people, the King declared it to be “ his express will and pleasure, that these feasts, and particularly orders the observance of Wakes. with others, should be observed ; and that his justices of the peace, in the several divisions, should look to it, both that all disorders there may be prevented, and that all neighbourhood and freedom, with manlike and lawful exercises, be used :” while the justices of assize are charged to see that “ no man did trouble or molest any of his loyal and dutiful subjects in or for their lawful recreations, having first done their duties to God.”

This time the King and his Archbishop were not at variance. The re-publication of the Book of Sports was accompanied by a letter from Laud to each of the other bishops, "making no doubt but that his lordship will use all diligence to have the books distributed through his diocese, and read publicly in church."ⁿ

The Long
Parliament
has it burnt,
A.D. 1643.

Act prohibit-
ing certain
sports, and
forbidding
concourses of
people to
sports out of
their own
parishes, on
the Lord's
day, under
Charles I.
A.D. 1625.

But the King's power of protecting his subjects in their lawful recreations was not equal to his will; and one of the acts of vengeance of the Puritans against the royal author and editor of the book was to have it burnt by the common hangman.^o At a much earlier period, however, the King had concurred in putting some check upon the extent to which the practice of amusements on Sundays prevailed, among those who dissented from the theory of their unlawfulness, by forbidding some, and enforcing the condition attached by his father to the allowance of any. "Forasmuch," so runs an act passed in the first of Charles the First,^p "as there is nothing more acceptable to God than the true and sincere worship of Him according to his Holy will, and that the holy keeping of the Lord's day is a principal part of the true service of God, which, in very many places of this realm, hath been and now is profaned and neglected by a disorderly sort of people, in exercising and

ⁿ Wilk. Con. iv. 485.

^o Rush. v. 317.

^p C. 1.

frequenting bear-baiting, bull-baiting, interludes, common plays, and other unlawful exercises and pastimes, upon the Lord's day : and for that many quarrels, bloodsheds, and other great inconveniences, have grown by the resort and concourse of people going out of their own parishes to such disordered and unlawful exercises and pastimes, neglecting divine service both in their own parishes and elsewhere ;" be it enacted, that, in future, "there shall be no meetings, assemblies, or concourse of people, out of their own parishes on the Lord's day, within this realm of England or any of the dominions thereof, for any sports or pastimes whatsoever ; nor any bear-baiting, bull-baiting, interludes, common plays, or other unlawful exercises and pastimes, used by any persons within their own parishes." The prohibition is enforced by penalty of 3s. 4d. for every person so offending, to be applied to the use of the poor of the parish where the offence shall be committed. It is made levyable by distress, and, in default of assets, the place of the fine is to be supplied by three hours' confinement in the stocks.

The act provides, that "no man be impeached by it, "except he be called in question within one month after the said offence committed ;" but leaves the ecclesiastical courts at liberty to "punish the said offences," as if that act had not been

Time limited
for prosecu-
tions under it.

The act continued by 29 Charles II.

made. This act was continued and enforced by the 29th of Charles the Second, in words which we have already quoted.[¶]

Public feeling in England on this subject.

The prevailing feeling in England has remained on the whole, as we all know, in favour in this respect of a modified puritanism; and, without condemning social re-unions, if not of an obtrusively gay character, upon the Sunday, has continued to regard every species of public amusement, however intellectual or refined, as a violation of the sort of feeling due to that day. But there has been little of legislation upon this matter, perhaps because little has, on the whole, occurred to call for it. Some instances of legislative interference are,

Law against the capture of game on Sunday or Christmas-day.

however, to be found. The law forbidding the capture of game on the Lord's day or Christmas-day, noticed under our last head,[†] may find a place here, as a companion to the canons of Enham and the laws of Canute, against hunting on the former seasons. And in the 21st of George the Third an act was passed,^{*} perhaps more with a political than a religious object, but which appears to come under this head. It recites, that "certain places within the cities of London and Westminster, or in the neighbourhood thereof, have of late frequently been opened for public entertainment or

Act of 21 Geo. III. A.D. 1781, against meetings on Sundays in London and Westminster.

[¶] See page 192.

[†] At page 203.

^{*} Cap. 49.

amusement on the Lord's day, commonly called Sunday ; and at other places within the said cities, or in the neighbourhood thereof, under pretence of inquiring into religious doctrines, and explaining texts of Scripture, debates have frequently been held on the evening of the Lord's day concerning divers texts of holy Scripture by divers persons unlearned, and incompetent to explain the same, to the corruption of good morals and to the encouragement of irreligion and profaneness." And to cure these evils, it proceeds to enact, that "any house, room, or other place, which shall be opened or used for public entertainment or amusement, or for publicly debating on any subject whatsoever upon any part of the Lord's day, called Sunday, and to which persons shall be admitted, by the payment of money, or by tickets sold for money, shall be deemed a disorderly house or place."

The keeper of such a house is subjected by the act to a penalty of 200*l.* for every Sunday on which the house shall be used for the purposes thus forbidden ; and also left punishable "as the law directs in cases of disorderly houses." On the person managing the entertainment, or acting as president of the debate, a fine of 100*l.* is imposed for every offence ; one of 50*l.* is affixed to the act of collecting entrance money or tickets, and a similar penalty to the advertising any such place of assembly ; or to printing and publishing such an adver-

Penalties
imposed by it.

tisement. These penalties are to be the reward of obtaining a conviction ; and an action for them is allowed to be brought at any time within six months after the offence.

Provisions
against eva-
sion of the
enactments.

“ And whereas,” says the act, “ by reason of the many subtle and crafty contrivances of persons keeping such houses, rooms or places as aforesaid, it may often be difficult to prove who is the real owner or keeper thereof, any person who shall appear to act as the master or mistress of any such house, shall be deemed the owner thereof.” If there are joint-owners, each is made liable to prosecution. The crafty device of raising money indirectly, by charging more than the ordinary price for refreshments, is met by a declaration, that to such a house persons shall be considered to be admitted by payment of money, though none is actually taken at the door ; and a similar declaration meets the plan of admitting parties by tickets as subscribers. As we have seen in other cases, the jurisdiction of the ecclesiastical courts is saved unimpaired : and it is further declared, that the act is in no way to affect the laws tolerating Protestant Dissenters.

Plan of the
remaining
part of the
work.

Thus have we traced downwards, from the earliest days of Christian legislation, through the laws of the period intermediate between that time and the rise of our national code ; and thence onwards to our own days, the various ordinances, whether promulgated by the civil or the ecclesiastical au-

thority, relating to the cessation of judicial proceedings, the abstinence from labour, and the suspension of amusements, or, briefly, to that which ought not to be done during the times peculiarly consecrated to religious observances. There is another division of the laws relating to these seasons, namely, those passed to enforce the due performance of what ought to be done on such seasons, with which we propose to close our inquiry. Before entering upon this subject we shall, however, shortly examine the actual law of England upon the points which have come before us.

But, first, as a conclusion to this part of our treatise, we wish to make certain general observations, which seem to us to arise out of the consideration of the laws already passed in review.

Summary of results deductible from the laws passed in review.

First, then, we may remark, that in each of the three classes of laws which we have endeavoured to investigate, one general course of legislation may be discerned. In each, the days whose observance is earliest and most frequently insisted upon are the Lord's days; in each the injunctions are gradually extended over other great Christian festivals; and in each the ground thus occupied has been gradually abandoned, and the laws nearly confined again to the times to which alone they originally related.*

Progress of legislation in regard to festivals.

Secondly. To a very great extent in the case

In regard to times of fasting.

* The exceptions in England being Christmas-day and Good Friday.

of legal proceedings, and to some extent also in respect to business and amusements, seasons of fasting were included within the operation of the law. But the prohibition maintained its ground better in reference to feasts, than in reference to these times of fasting. Labour or business has indeed so rarely been forbidden in such seasons, and then in so few of them, that they can scarcely be considered as having been substantially included within the prohibition at all. And amusements—however the feelings of individuals may have induced them to act—have not, as we have seen, for many centuries, been forbidden by law in England during seasons of fasting, while in respect to judicial matters, the prohibition, which, from the fifth up to the eighth century, had been gradually extended, was given up in the fourteenth.

Labour, times at which specially prohibited.

Thirdly. While the prohibition of legal proceedings has specially extended to times of fasting, the prohibition against labour has been peculiarly extended to the Christian festivals; so that this regulation has applied to a great number of feasts not affected by either of the other commands.

Progress of legislation in respect to amusements.

Fourthly. In regard to amusements in holy seasons, the feelings of the Christian world appear to have gradually relaxed from the strictness of the earlier ages, except in so far as since the Reformation a different feeling has prevailed in respect to the Lord's day. The most stringent laws against

amusements during holy seasons are those of the Christian emperors. In regard to this subject, it is, however, necessary to bear in mind that, according to the canon law, the feast ends with vespers, as it begins from the vespers of the preceding day; a circumstance which, though it has little effect upon business or labour, becomes very influential in questions of amusement.

Effect of the canonical termination of the day.

Fifthly. Throughout the long series of laws relating to the observance of the Lord's day anterior to the Reformation, there are scarcely any^u in which its observance is rested upon the fourth commandment; though that is sometimes adduced by way of analogy.^x The reasons for the observance of that day are habitually drawn from Christian motives; and the observance of other days, though less frequently enjoined, is enjoined to the extent to which it is directed, as positively as that of the Lord's day.

Grounds on which the observance of the Lord's day rested.

Sixthly. All the regulations with which we have been dealing have, to a great extent, a local character. The bishops and people in each district were left at liberty to appoint days to be peculiarly observed there; and, in judicial matters at least, the bishops were held to have the power to dispense with the canonical observance of any particular season.

Local character of these regulations.

^u Only Archbishop Chichele's mandate, page 121.

^x See pages 119, 126, 134.

To illustrate the three first remarks, the author refers to the tabular view, to be found at the end of the volume, of the different times which have been appointed to be observed in either of the three methods which we have been engaged in considering.

CHAPTER VII.

ACTUAL STATE OF THE ENGLISH LAW IN RESPECT
TO HOLY SEASONS.

Matters affecting the Public Welfare—Courts Martial—Star Chamber—Affrays—Privy Council—Parliament—County Courts—Writs—Patents—Court of Exchequer—Masters—Adjournments—Criminals—Ministerial Acts—Matters exposing Individuals to serious Injury—Court of Admiralty—Public Announcements—Matters not falling under these heads—Proclamation of a Fine—Judgment—Mode of proving that a day is non-juridicus—Course when a day fixed is non-juridicus—Holidays by Officers of Court—Statute incidentally affecting a Holiday—Sunday—Act of Charles II.—Arrest—Service of Process—Notice of a Plea—Delivery of Declaration—Warrant on non-payment of a Fine—Judge's Order for Payment—Attachment for non-performance of Award—for Contempt—of an Order of Chancery—Escapes, if not voluntary—Bail—Warrant to find Sureties for Good Behaviour—Citations—Contracts at Common Law—Statute of Charles II.—Bakers—Business not done in the Exercise of a Man's Calling—Hiring a Labourer—Buying a Horse—of a Horse-dealer—Several Acts on the same Day—Statute of Charles I.—Vans—Stage-coaches.

WE proceed, according to our plan, to consider what, according to the decisions of the courts of law in such cases as have come before them, is the actual state of the law of England upon the three points already brought to our notice, or rather upon the two first of those points; for, upon the last head, the reported cases furnish us with no authorities. The law, so far as relates to the sus-

pension of judicial proceedings on holidays, may be conveniently considered under two great heads, namely, the ancient law existing before the acts of Charles the First and Second, and still applicable, except so far as they are thereby superseded; and the law, in so far as it depends upon the positive enactments of those and subsequent acts.

Principles upon which the common law decides as to the lawfulness of acts done on dies non juridici. First principle, such acts lawful, for the public welfare.

The ancient law on this matter varies in its regulations, according to the nature of the different courts, and the subjects wherewith they have to deal; and the legality of judicial proceedings, upon days not judicial, depends, according to it—in part, upon the consideration, of whether those proceedings concern the public welfare, or relate only to the interests of individuals,—in part, upon the injury which individuals are likely to sustain from the refusal of the courts to proceed.

Therefore the Court-martial held to be always open.

Thus the fear of injury to the general welfare, if the punishment due to breaches of military discipline could not be awarded whenever it might be deemed expedient, has led to the Court-martial being held to be always open, according to the analogy of the law of Trajan, cited above. †

For a reason, similar in kind, though of still more imperative necessity, the observance of holidays, however sacred, must give way to the preservation of the public peace against violent outbreaks.

So the court of Star Chamber.

Therefore, the court of the Star Chamber, while

† Spel. d. O. T. v. 3. See page 7.

it subsisted, was regarded as always open; for it was its office to "discover, prevent, and suppress all dangers and enormities, and provide for the good and safety of the kingdom; and an evil might happen in the night, which it would be too late to prevent in the morning;"^z and if an insurrection or affray arose on the Sunday, and it were not suppressed, the officer, whose duty it was immediately to keep the peace, was finable.^a The same principle extends to the meeting of the privy council, and its off-shoot, the cabinet council, at the present time; which, when the public welfare appears to demand it, meets on the Sunday or any other holiday, without scruple.

So the privy council may lawfully sit on any day.

On the same principle, also, we conceive is rested the occasional assembling of the legislative body on a Sunday, as happened on the death of George the Second, when both houses met on that day, the 26th of October, 1760, to take the oaths.^b Our earlier history will furnish us with similar instances. Thus in the reign of Edward the Third, parliaments are recorded as meeting on a Sunday on more than one occasion;^c and in the sixteenth

Parliament may meet and sit in like manner.

Instances on the death of Geo. II.,

in the reign of Edw. III., in his 17th and 43rd years;

^z Spel. d. O. T. v. 3. See p. 22, the law of Honorius, as to the Isaurian pirates, for an analogous case.

^a Cro. Jac. 496.

^b See *Swann v. Broome*, 1 Bl. 499, where Lord Mansfield says, "I myself have sat in parliament on a Sunday."

^c Cotton's Abridgment by Prynne, p. 36, 108. The same day was selected to commence, in the same reign, an inquisition of

under the
Long Parlia-
ment;

of Charles the First, "in a case of great necessity,"^d the Long Parliament, after hearing a sermon, commenced business at nine in the morning of that day, and sat all day; passing, however, a resolution "to enter upon no matter which did not concern the interests of religion and the welfare of the kingdom, and that it be not drawn into a precedent by any inferior court or private person, for neglecting the due observance of the Lord's day."^e

the ninths, i. e. of the ninth part of the goods and chattels, granted in the 1st Edw. III. c. 20, for two years, on account of his wars with France, and which commissions were appointed to assess. This particular inquisition was made at Hames, in Sussex.—*Inquis. Non.* 380. Of the holding assizes on a Sunday in the same reign, see p. 69. In the same reign we have an instance of parliament meeting in mid Lent.—14 Edw. III. Cotton, *Abr.* 22.
^d Viz. the resolution of the king to set out for Scotland on the Monday, communicated to them on the Saturday.—*Rush.* iv. 361.

Prohibition
against hold-
ing public
assemblies on
a Sunday, by
the council of
Enham,
A.D. 1009;

repeated in
the laws of
Canute,
A.D. 1032;

and in those
of Henry I.
Sittings of
the French
chamber of
deputies on a
Sunday.

^e At a still earlier date there are some English laws against the practice of holding public assemblies on holidays. Thus the council of Enham, Can. 15, enjoins every one to abstain on Sundays from "the assemblies of the people."—*Spel. Con.* i. 518. The same prohibition is found in the laws of Canute, ch. 15, *Spel. Con.* i. 546, (two years after his journey to Rome, as to which see Thierry, *Norm. Conq.* ii. A.D. 1030). And the law of Henry I., cited p. 51, includes the "making of laws" among the acts which ought not to be done during the seasons therein specified. The writer is not aware of any other laws on the subject. The sittings of the French chamber of deputies on a Sunday are, we presume, founded on the same idea of public utility, though coupled, at least in many minds, with a disposition to oppose all that the Church seems to require.

For a similar reason, a county court may be legally held on a dies non juridicus, as on Christmas-day, if that is the day on which it happens to fall, and circumstances prevent an adjournment to another court day.^f

and a county court may be held on a dies non juridicus.

But—to return from this slight digression upon a subject connected with our present inquiry, and which this appeared the fittest place to introduce,—it was, we conceive, from the same apprehension, namely, that the public welfare might be endangered, if any delay were interposed to the obtaining those writs in which all judicial proceedings anciently originated, that the Court of Chancery, in so far as it is the “*officina brevium, et consistorium æqui et boni*,” is held to be always open.^g So that “if an original writ bears teste on a Sunday it is good enough, for the chancellor may seal it upon any day.”^h In like manner, an information in the Exchequer, under an act of parliament, may be exhibited on a Sunday; and many instances of such informations are said to exist.ⁱ Indeed,

Court of Chancery, as *officina brevium*, held to be always open;

and informations in the Exchequer may be exhibited on any day;

^f Cro. Jac. 595, where it is said such was the case that year with the courts for the counties of York and Leicester, on the occasion of an election for parliament.

^g Spel. d. O. T. v. 3.

^h Waite v. Stoke, Cro. Jac. 496. The same rule is applied to a patent, *ib.*; perhaps, because much mischief might ensue if the royal grant were liable to be invalidated, owing to the day on which it was made.

ⁱ Bedoe v. Alp, Sir W. Jones, 156.

and the Exchequer may sit out of term, or on a Sunday. by precedents derived from a period when the business of that court was less of a judicial than of an executive character, and it had to deal with matters which the interests of the crown, and, therefore, of the public, might require to be dispatched without delay, it is considered as capable of sitting out of term or on a Sunday.^k

The masters' chambers were open formerly on the second of February. To the desire of not delaying the public business may be referred also the custom of the chambers of the masters, in the common law courts, being open, and business transacted there on the second of February, at a time when that day was still kept by the courts as non juridicus.^l

A court may sit on a dies non juridicus for the purpose of adjournment. Still more decidedly may we connect with the upholding of the public interest, the rule which permits a court to sit upon a day otherwise non juridicus, for the purpose of adjourning to one that is so; a rule rested,—in part upon the observation, that in the time of Henry the Sixth a court might be held on a Sunday; for at the fairs, which appear, from the act passed in the twenty-seventh year of that monarch, to have been held on those days,^m a court of pie poudre was always to be found;—and

^k Madox, Hist. of Exch. 551, where it is said that in the 5th Edw. II. the barons of the exchequer and several persons of the board sat on a Sunday. See as to the sittings out of term, Spel. d. O. T. iv. 15.

^l Baddeley v. Adams, 5 T. R. 170.

^m Hunt v. Client, Cro. Jac. 595. See the next page.

in part upon the practice, already mentioned, in the case of the county courts.^a How great indeed might not the public inconvenience be, if in such a case, for instance, as that alluded to in the beginning of these pages, the court could neither have continued its proceedings, nor have adjourned?

To this principle, also, may be referred the doctrine that offenders against the criminal law may, and ought to be pursued upon the Lord's day, although their acts may be immediately attended with peril to individuals only; a doctrine established in a case where the question was, whether "one having been robbed on the Sunday morning, during the time of divine service, the hundred was chargeable, under the statutes of Hue and Cry?"^o The court held that it was; "for the pursuing of felons, who attempt to violate the Sabbath, is no offence, but a good work of charity and justice, and otherwise would cause robberies to be committed on the Sunday. And divers persons, as physicians, chirurgeons, midwives, &c., might be compelled to travel on the Sunday, and should be protected; and by the statute of the twenty-seventh of Henry the Sixth,^p fairs may be held upon the four Sundays in harvest, and so it allows

Criminals to be apprehended on Sundays;

and the hundred chargeable, if pursuit not made.

^a See page 242.

^o 13 Edw. I. s. 2, c. 1, 2; 28 Edw. III. c. 11; and see 27 Eliz. c. 13.

^p See page 123.

riding on a Sunday, and then they who ride ought to be protected." The learned judges proceed to support their argument, by the analogies of the suppression of public disturbances, which was enjoined, and the sealing of original writs and patents, which was not forbidden on that day; as also by the case next to come under our notice, of the performance of ministerial acts thereon. It must be observed, however, that the bench were not quite unanimous in their decision. The Chief Justice Montague was of a different opinion; "for the county," he argued, "was not bound to watch on a Sunday; and because the law appoints all men to be at divine service, they are not bound to pursue robbers;^q and it is at their peril who travel on a Sunday, and the county was not required to pursue but at convenient times."^r We have seen, that the 29th of Charles the Second, while it still enjoins upon the hundred the pursuit of robbers on a Sunday, throws the whole loss incurred by the robbery, on the individual robbed.^s

Alteration made in this respect by the 29th of Charles II.

Ministerial acts lawful on a Sunday, though directed only to the enforcement, by individuals, of their rights.

The furthest extension of the principle on which we have been dwelling appears to be found in the justification of the execution of ministerial acts upon a Sunday, though not required for the maintenance of the public peace, or the protection of

^q See 1 Eliz. c. 2.

^r Waite v. Hundred of Stoke, Cro. Jac. 496.

^s See page 193.

the citizen, but being simply the enforcement, by individuals, of their legal rights. We class this practice among those permitted as conducing to the public benefit, because it is essential to the public welfare that the laws should be obeyed; and, therefore, no day should be allowed to shelter any one in disobedience to them. But it may be also referred to the fear that the object of legal pursuit might escape altogether, under the shelter of the holiday, if that were suffered to protect him, and thus it would be brought under the principle of which we shall next treat. Here, therefore, seems to be its proper place, as the transition from one principle to the other.

The position itself is clearly laid down by the authorities. We have already seen it referred to by the majority of the judges in *Waite v. Stoke*, as an analogous case in support of their views, and it forms the express ground of more than one decision. Thus where one was arrested by a serjeant of the King's Bench on a Sunday night for debt, and killed the officer in endeavouring to escape, this killing was held to be murder; "for ministerial acts may be lawfully executed on a Sunday, and God permits things of necessity to be then done: *et bonum est benefacere*."^t So a prohibition was granted against levying costs imposed by the high commission court upon a serjeant of the mace

Therefore the killing an officer who arrested one for debt on a Sunday, held to be murder.

^t Mackale's case, *Cro. Jac.* 279; 9 *Co.* 66, a.

for arresting one as he was returning from church on a Sunday, contrary, as was said by Mr. Justice Croke, to the provisions of the 50th Edward III. c. 1, and the 1st Richard II. c. 15, for the immunity from arrest secured by those acts was held to apply only to arrests as between private parties; whereas here the party was arrested "for the king." And in another case, a fine imposed upon an officer, for an arrest made under the same circumstances, was discharged, because the arrest was in execution of an order of the sessions.* The party was arrested under a process for good behaviour, from the sessions, as he was returning from the divine service.†

Second principle. Judicial acts allowed to be done on dies non juridici, for the sake of preventing serious injury to individuals.

We proceed to consider the second principle, to which we have stated that the performance of judicial acts upon days, otherwise non juridici,

* Pit v. Welby, 2 Bulst. 72. It is not, however, very clear how these acts bore on the case. The 1st Rich. II. is confined to "any person of holy church," and the evil against which it makes provision is only the arresting "as well beneficed people of holy church as other" in churches and churchyards, and "sometimes whiles they be attending to divine services, and also in other places though they be bearing the Body of our Lord Jesus Christ to sick persons." The 50th Edw. III. c. 1, is only a general direction, that "holy church have all her liberties and franchises in quietness and without disturbance." The arrest was, however, contrary to the laws of Edward the Confessor and Will. I. See pages 38, 51.

† Prinsor's case, Cro. Car. 602.

‡ Cro. Car. ib.

may be referred, namely, the prevention of serious injury to individuals. Some of the cases already noticed may, as has been observed before, be referred in part to this principle. Thus the protection of travellers is one of the reasons given for the decision in *Waite v. Stoke*: in *Mackaley's* case, necessity, and the maxim, it is good to do good, are assigned among the reasons to justify the arrest for debt, meaning, apparently, the creditor might otherwise not be paid, and it is good to help him to his right: and the facility for obtaining writs at any time from the Chancery as much conduced to expedite justice to individuals, as to secure the public peace. But one regulation is especially referred to this ground, that, namely, by which the Court of Admiralty is held to be always open; "for strangers, and merchants, and sea-faring men, must take the opportunity of tides and winds, and cannot, without ruin and great prejudice, attend the solemnity of courts and dilatory pleadings."*

As to protect travellers.

To prevent a debtor defrauding his creditor.

To expedite justice.

Therefore, the Court of Admiralty always open.

To this principle also may, we conceive, be referred the laws which have enjoined the publication on Sundays, during the divine service, of proceedings of a judicial character, such as it greatly concerns individuals to know: for by no other method, at least before the present great circulation of newspapers had grown up, could the

Certain judicial proceedings directed to be published on Sundays.

* Spel. d. O. T. v. 3.

As in cases of outlawry.

Notices affixed to the church doors now substituted.

But general rule of the common law is, that a court of justice cannot sit on a dies non juridicus.

Therefore the proclamation of a fine dated on a Sunday, held to be bad; and judgment given thereon reversed;

necessary information have been so effectually conveyed. Thus it is enjoined by a law of Queen Elizabeth, which has been said not to be affected by the general words of the 29th of Charles II.,^a that proclamation of outlawry shall be made once upon a Sunday, at the church door of the place where a defendant, whom it is intended to outlaw, resides, one month, at least, before the writ is put in force. In this, however, and similar cases, in which by law, statute, or custom, "proclamations were made in churches, or chapels, during or after divine service," a modern act of parliament substitutes written or printed notices, to be affixed to the church doors.^b

Where, however, neither of the principles on which we have been dwelling interferes, the general rule of the common law appears to be, that a court of justice cannot sit on days non juridici, i. e., at the present time, on Sundays and Christmas-day, and that any act done by them on such days is therefore invalid. Thus in the fourth of Henry the Seventh, the proclamation of a fine dated on a Sunday was held to be bad, because "the justices do not, nor ought not to sit on that day."^c So in a later case, a judgment, given by a court at Lynne, was reversed by the Queen's Bench, because it had been given on a Sunday.^d

^a 31 Eliz. c. 3. See 5 Mod. 450. ^b 1 Vict. c. 45.

^c Fish v. Broket, Plowd. 265; cf. Cro. Jac. 496.

^d Page v. Fawcett, Cro. Eliz. 227; 1 Leon. 243.

In yet more modern times, this doctrine has been affirmed by the highest authority, in a case where the point was fully considered, and repeatedly argued by very eminent counsel, Mr., afterwards Justice Blackstone, being one. The case referred to is *Swann v. Broome*.^e The point arose upon a recovery; which, although, long before the date of this case, it was recognized as a mere form, by which the owner of an estate tail exercised his right to dispose of it, yet was, theoretically, a judgment of the Court of Common Pleas, given in what was called a real action, and adjudging that one party should recover lands, alleged by him, and admitted by his opponent, to have been unjustly taken from him, and, at the same time, that this opponent should be recompensed by a third party, who likewise admitted that he had engaged to warrant his title to the lands thus taken away. It was necessary that this action should be conducted "with all the ceremonies and solemnities of any other real action:"^f and whatever neglect would have invalidated the one, would, it was held by the court, invalidate the other. In the case before us, the day on which the writ of summons to the tenant in tail to appear in the action was returnable, was a Sunday, the 13th of May, 1750; and on that day he died. Now the judgment, it was held, could

and a recovery suffered thereon was set aside.

^e 3 Burr. 1595 ; 1 Bl. Rep. 496, 526, and 6 Bro. P. C. 132.

^f 3 Burr. 1597 ; 1 Bl. Rep. 530.

not be presumed to be given earlier than the day on which, upon the face of the record, it was shown that the parties could for the first time have appeared to receive it; neither could it be given after the death of the tenant in tail. Thus the presumptions, which, under other circumstances, would have been made, viz., the one that the judgment must be taken to be pronounced on the first, or *essoign day*,^g of the term; and the other, that the party must be taken to have appeared on the Monday following the day named in the writ, were from the peculiar circumstances of this case excluded; the judgment could be supported only upon the hypothesis, that it was given on the Sunday; but for the judgment to have been then given, it must have been lawful for the court to have then sat; and as it was decided that the court could not do this, the judgment was necessarily reversed, and the recovery set aside.^h

^g As to which, see page 56.

^h Two circumstances were much relied upon in the argument in this cause, as showing that the courts could legally sit on a Sunday; the first, that the return days in the terms were frequently Sundays (see p. 55); the second, that the form of the notices to appear continually required the appearance to be then made. To this argument the court answered, that at the time when these writs and forms of notices were framed, the courts used to sit on a Sunday; and that the canons extend their prohibition only against awarding process, and giving judgment on those days, or such like acts of the court, so that the writs and notices were left in their original shape. The answer

With this decision closes the list of authorities upon the power of the courts to proceed upon holidays, as settled by the law anterior to the time of Charles the Second. But there remain some points which may deserve a brief notice before we proceed to consider the restrictions placed upon the exercise of that power by the statute passed in that reign.

The first relates to the recognized mode of proving that any judicial act was performed on a dies non juridicus. Can a court of error take notice of the fact if it does not appear on the record, that is, if only the day of the month on which the act was done be therein stated, but not that this day was (e. g.) a Sunday? Three cases have determined that it can; the first, that already mentioned of *Page v. Fawcett*,ⁱ where it was held that examination of the almanack was sufficient evidence: the two others of a more recent date; where a writ of inquiry, made returnable on *Tres. Trin.*, which happened to be a Sunday, was set aside on that account.^k

How it may be proved, that any particular day was a dies non juridicus.

seems somewhat difficult to reconcile with the history of the laws upon the subject of the observance of holidays, as before given; but it is not easy to find a better. The essoigns in the time of *Fitzherbert*, in *Easter Term*, were on the Monday. *D. Na. Bre. 17.* See dictum of *Piggott* in 12 *Edw. IV.*, 8 B. pl. 22, cited 3 *Burrow*, 1600.

ⁱ *Cro. Eliz.* 227.

^k *Harvey v. Broad*, 6 *Mod.* 159, 196; 2 *Salk.* 626; *Davies v. Salter*, 6 *Mod.* 251.

In general, any act which ought to be done on a dies non juridicus, may be done the next day.

The last cases lead us to the second point, namely, what is to be done when by any cause some act is appointed to be performed on a day not judicial? In most cases, the remedy seems to be, that the act is allowed to be done the day after. Thus the essoigns were allowed to be kept on a Monday, when the essoign day fell on a Sunday:¹ and when Midsummer day fell upon the last day of term, after much consideration, the day following was kept.^m And, in *Swann v. Broome*,ⁿ it seems generally laid down with respect to the writs and notices made returnable, or given for a Sunday, that the business must be transacted on the following day. But the cases of *Harvey v. Broad*, and

But this principle not applicable to a case where any act is ordered to be done within a fixed time.

Davies v. Salter, decided that this principle does not apply to a delegated authority, whereby any particular act is ordered to be done within a certain time: as, e. g., to a writ of inquiry made returnable on a given day. For the sheriff's authority determines on the day when the writ is directed to be returned; and therefore, if returned as executed the day after, as was done in those cases, the return is bad. On the other hand, an act which cannot regularly be done before a certain day, is not permitted to be done the day before because the character of the day when it can first be regularly

So an act which cannot regularly be done till a certain day may not be done the day before, because that day is dies non juridicus.

¹ *Harvey v. Broad*. See page 253.

^m *Davies v. Salter*, 6 Mod. 251; 2 Salk. 626, D. See p. 79.

ⁿ 3 Burr. 1600; 1 Bl. Rep. 530.

done, prevents its being done then. Thus a notice of a declaration filed on a Saturday was held to be irregular, Sunday being the first day whereon it could be regularly filed, on which day the statute of Charles the Second interfered with the filing of it.^o

The third point proposed to be noticed is, that the courts will not allow their officers to make holidays by custom, on days when the court itself sits. Thus the Court of King's Bench refused to listen to any plea of the kind, in justification of the closing of the Writ Office on the 29th of May;^p or on St. Barnabas' day;^q or of the King's Bench Office on the latter day.^r And yet a precedent, of thirty-five years standing at the least, was proved in support of the custom.^s "For," says Justice Blackstone, in giving judgment in the last case, "this officer, like all the others, is supposed to be in court, sitting at the feet of the Chief Justice, and affixing the seal of the court to all judicial writs witnessed at Westminster in his name: whenever therefore the courts sit, he is supposed to sit."^s

The courts will not allow holidays to be made by their officers, on days when they sit themselves.

Lastly, it may be mentioned, though it is perhaps

An act of parliament di-

^o Moffat v. Carter, 1 Bos. & P. N. R. 75.

^p Pater v. Groome, 7 T. R. 336.

^q Figgins v. Willie, 2 Bl. 1187.

^r Sparrow v. Cowper, 2 Bl. 1314.

^s A practice of demanding an extra fee of 10s. for sealing writs on those days was treated by the court as an extortion, and contrary to Magna Charta.—2 Bl. 1314.

recting judicial acts to be done on a particular day makes it judicial.

scarcely necessary to do so, that an act of parliament expressly directing a certain day to be part of term, overrules any custom of the courts to treat it as non judicial, though the act does not appear to have contemplated any such clashing as likely to take place. Thus, in the first of James the First, the courts sat on St. John the Baptist's day, because it fell the next day after Corpus Christi, which, by the words of the statute of Henry the Eighth,¹ was expressly fixed as the first day of full term.²

We pass on to consider the change made in the legal doctrine on our present subject, by the 29th of Charles the Second.

The act of Charles the Second prohibits the execution of ministerial acts on Sunday.

The change consisted in extending to ministerial acts, i. e. acts done in enforcement of a judgment of the court, or having as their object to bring parties before it, the same incapacity of being executed on the Lord's day, unless they relate to the prevention of crime, or the preservation of the public peace, as was annexed by the common law to acts of a purely judicial character.

Thus arrest on a civil process, is illegal thereon,

and service of process thereon is a nullity;

Thus an arrest on a civil process, made since the act, on a Sunday, has been held to be altogether void; so as to subject the party making it to an action for false imprisonment.³ And in a like manner, the service of process on that day is a

¹ Supra, page 74.

² Cro. Jac. 16.

³ Wilson v. Guttery, 5 Mod. 95; Lidford v. Thomas, 6 Mod. 96; Wilson v. Tucker, 1 Salk. 78.

nullity; and cannot be cured by any subsequent act of the defendant; as by his not objecting till after a rule to plead had been given;^y or by his acceptance of the service, at the time knowing it to be irregular.^z In the case of a writ, it is to be observed, that the nullity is extended by the act to the writ served, as well as to the service. But it is not to be concluded that, therefore, the act does not apply to cases where that upon which the process is founded stands good, though the process is set aside: as, e. g., a rule nisi for an attachment on non-payment of a sum under a judge's order:^a though the argument was pressed in that case.

although
that upon
which the
process is
founded
stands good.

To estimate aright the operation of this act, it becomes important to determine what is "process" within the meaning of its clauses: and upon this point some questions have arisen. Thus it was asked, is notice of a plea process within the act; seeing it is not process in respect to the writ? It was answered, all notices upon which rules are made are process in respect of the rule; therefore it is included.^b More doubt existed with respect to the delivery of a declaration; which Justices Powys and Gould regarded as only a quasi notice; as a letter, not as process; and therefore held,

Notice of a
plea is "process"
within
the act.

So is the
delivery of a
declaration,

^y Taylor v. Phillips, 3 East, 155.

^z Morgan v. Johnson, 1 H. Bl. 628.

^a M'Illeham v. Smith, 8 T. R. 86.

^b Roberts v. Monkhouse, 8 East, 547.

against the opinion of Chief Justice Holt, that it was excluded from the operation of the statute.^c But the opinion of Holt was supported by Justices Turton and Eyre, in another case, and this proceeding adjudged to be one of those prohibited;^d in conformity, as was said by Turton, with a decision of the Court of Exchequer; and the view taken by these judges has continued to prevail.^e

and a warrant for the apprehension of a party for non-payment of a fine, though in respect of an offence also indictable;

This however was by no means the only point in the construction of the statute, which has called for judicial decision. Criminal process is, as we have seen, expressly excepted; and in more than one instance, it seemed doubtful, whether an act was to be considered as done in execution of a civil, or a criminal process. Thus, if a party were indictable for something he had done, under an act of parliament, must not that action be taken to be a constructive breach of the peace? And, therefore, if for the same offence he was also liable to be fined, upon a summary process, before a justice of the peace, must not a warrant for his apprehension on non-payment of the penalty be taken to resemble a warrant on an indictment, and therefore to come within the exception? The point arose upon the Lottery Act:^f but the court held that the same

^c Walgrave v. Tailor, 1 Ld. Raymond, 705.

^d White v. Marton, Fortescue, 375.

^e See Morgan v. Johnson, 1 H. Bl. 628.

^f 22 Geo. III. c. 47.

rule must be applied as in an action brought on a penalty, where execution could not be had on a Sunday; and therefore the arrest was illegal.[§] So also the sort of contempt of the court, shown by disobedience to a judge's order for the payment of a sum of money, is not looked upon as criminal enough to justify the execution, on a Sunday, of a rule nisi for an attachment on the non-payment.^h And the same rule has been applied to an attachment for the non-performance of an award; which is now regarded merely as the execution of a civil process,ⁱ though it was at one time looked upon in the light of a means of enforcing obedience to the court; and therefore held to be within the exception.^k

That an attachment for contempt of the court might be served on a Sunday had been long before decided: for surely, remarked Chief Justice Holt, "the Lord's day ought not to be made a sanctuary for malefactors;"^l and "the contempt must be regarded as a breach of the peace;"^m as indeed it was directly in the last case; for it consisted in a

[§] King v. Myers, 1 T. R. 265.

^h M'Illeham v. Smith, 8 T. R. 86.

ⁱ Per Buller, J., in King v. Myers, 1 T. R. 266, who cites as analogous the case of an attachment for non-payment of costs on an assault, which had been held to be discharged under the Lord's act.

^k See 1 Atk. 57, and Buller, u. s.

^l Sir — Cecil, 12 Mod. 348.

^m Anon. Willes, 459.

though not
attended with
any direct
breach of the
peace ;

rescue. The doctrine was, however, applied by Lord Hardwicke to a contempt of an order of the Court of Chancery, where the breach of the peace could be constructive only.^a His Lordship's decision may perhaps be considered as open to some question, inasmuch as he rests it, in part, upon the analogy of an attachment for the non-performance of an award ; which, as we have seen, has been regarded, in more modern times, in the light of a civil process only, and therefore as not within the exception in the act. But it is also rested by him upon the form of the order, namely, " that the party shall stand committed ;" and upon its being directed, not to the party himself, but to the gaoler ; so that it would appear to come within the principle of the class of cases to be next mentioned, those relating to escape warrants. And upon this ground it may probably be supported.

and a pri-
soner who
escapes may
be retaken on
a Sunday ;

These cases of recapture are decided upon the principle, that a prisoner who escapes is thereby guilty of a wrong, by which he ought not to be allowed to profit ; and that the capture is to be regarded, not as the execution of a new process, but as the continuance of the old seizing by a fresh pursuit ;^o nor is this principle affected by the pursuit being made under a fresh warrant, issued as

^a E. P. Whitechurch, 1 Atk. 55.

^o Sir W. Moore's case, 2 Lord Raym. 1078 ; 6 Mod. 95 ; 2 Salk. 626 ; 3 Salk. 149.

directed under an act of William the Third, for the purpose of facilitating the recapture.^p

It would seem to be upon a similar principle, because of the wrong done to them by their principal, if he refuses to surrender when called upon by them, that bail are held to have the right to "take up their principal, even on a Sunday, and confine him till the next day, and then render him."^q They have him, it has been said, "always upon a string, and may pull the string when they please."^q

There is, however, a limit to the application of the principle in the case of escapes. The escape must not be with the consent of the party whose duty it is to enforce the imprisonment. When it was so, the courts have held, that even the bail to a sheriff could not retake the prisoner on a Sunday.^r Nor was the hardship done to a gaoler, who had allowed a prisoner his liberty out of motives of kindness, and on a promise on his part to return into custody whenever called upon so to do, allowed to prevent the prisoner from obtaining his discharge as illegally taken, on a motion for that purpose, the gaoler having in fact retaken him on Sunday morning.^s An analogous decision settled that the ignorance of the gaoler, at the time

and bail may take their principal on that day.

But the escape must not be connived at by the gaoler,

however good the motive in so doing.

Nor is a gaoler who has dis-

^p 8 & 9 Will. III. c. 17. See the case last quoted.

^q 6 Mod. 231.

^r Brookes v. Warren, 2 Bl. 1273.

^s Featherstonehaugh v. Atkinson, Barnes's Notes, 373.

charged a prisoner in ignorance that he ought to be detained, justified in retaking him on a Sunday.

Warrant for the capture of a party to make him find sureties for good behaviour, is within the exception.

And the act does not apply to citations by the Ecclesiastical Court.

when the prisoner was discharged, of there being another detainer lodged against him, under which he ought to have been kept in custody, would not authorise his recapture on a Sunday.[†]

Two other cases remain in which the prohibition contained in the statute has been considered inapplicable. The first was upon a justice's warrant for the capture of a party, for the purpose of making him find sureties for good behaviour; a proceeding which was held to come within the exception of process "for the preservation of the peace."[‡]

The second related to citations by the Ecclesiastical Court, the serving whereof upon a Sunday would not, it was held, be sufficient reason for interfering with the proceedings in that court. "For the reason of serving it might be, that they cannot do it so well upon any other day; and if the ecclesiastical law has always been to serve this process on a Sunday, shall these general words in the statute take away this law?"[‡] In support of the opinion that it would not, the court referred to the direction by the act of Elizabeth, to make proclamations of outlawry at the church doors, which, as we have seen,^{*} was held not to be affected by these words of the more recent law.

[†] Atkinson v. Jamieson, 5 T. R. 25.

[‡] Johnson v. Coltson, Sir T. R. Rep. 250.

[‡] Anon. 5 Mod. 549. However the prohibition was granted, upon another ground. By 1 Vict. c. 45, s. 4, the publishing such citations in churches is prohibited.

^{*} Page 250.

Thus have we passed in review the decisions or dicta, by which the law relating to the acts of the courts of justice, or magistrates and their subordinate officers, on Sundays and other holidays, have been settled or expounded.

It remains now to notice those whereby the law relating to the acts of private persons on those days has been similarly defined.

Law as to the acts of private persons on holidays.

By the common law, notwithstanding the statutes of the early Saxon kings, the validity of a contract was held not to be affected by the day on which it was made. Thus, although Lord Coke, citing the law of Athelstan mentioned above,^y remarks, that there should be no merchandizing on a Sunday;^z yet it has been decided, that a demurrer would not lie to an action brought to recover oxen, stated to have been sold at a fair at Stepney, because the fair was alleged to be holden on the 29th of August, without excepting Sunday, for "a fair holden upon a Sunday is well enough." And the objection that the holding fairs on that day was prohibited by the statute of Henry the Sixth,^a was met by the observation that this statute only "inflicted a penalty upon them that sell on that day; but it makes not the sale void."^b The latter doctrine has indeed been disclaimed in modern times;

A contract good at common law though made on a Sunday;

as, e. g., for the purchase of oxen.

^y At page 107.

^z 2 Inst. 220.

^a Supra, page 123.

^b Comyns v. Bowyer, Cro. Eliz. 485.

So a fine dated on a Sunday is good as a fine at common law.

And an indictment against a butcher for selling meat on a Sunday, held to be bad, because not laid under the statute.

but the case is cited by the court, in a recent decision, as a proof that "there was nothing in the common law to avoid a sale made on a Sunday, otherwise the mention of the statute would not have been introduced."^c This position is further proved by the case cited before from Plowden,^d where the proclamations upon a fine were held bad, because purporting to be made on a Sunday; for the fine itself was held to be good, as a fine at common law and made without proclamations. Now although the fine was grounded upon an action brought in the Court of Common Pleas, the agreement by which the action was supposed to be terminated was a private act: and this we conceive must be taken to be made at the time when the fine was proclaimed. The law thus laid down has been applied in the case of an indictment against a butcher for exercising his trade on a Sunday; which, not being alleged to be in pursuance of the statute of Charles, had to be treated according to the principles of the common law; and was therefore adjudged to be bad.^e

Such being the doctrine of the common law in these matters, the cases brought before the courts in respect to them have been necessarily connected with the statute law upon the subject. And of

^c Drury v. Defontaine, 1 Taunt. 131.

^d Supra, page 250.

^e Rex v. Brotherton, 1 Strange, 702.

these statutes, as that of Charles the Second has given rise to the greater number of decisions and of the earliest date, we will consider it first.

The first point, upon which a question as to the effect of that statute arose, was as to the extent to be attributed to the exemption contained in it in favour of "cooks' shops and victualling houses for such as cannot be otherwise provided for."

Bakers held to come within the exception in the act of Charles II. in favour of cooks' shops.

Did this exemption extend to bakers? The question was twice brought before the courts. The first time on an information against the magistrates of Middlesex, for refusing to convict a man who had baked meat puddings and pies on a Sunday; when it was held, both on the ground of this proviso, and on the general exception contained in the act in favour of works of piety and necessity, that the act of the baker did not fall within the statute; Mr. Justice Wilmot observing, that it was "as reasonable that the baker should bake for the poor, as that the cook should roast or broil for them."^f On the second occasion, a conviction under the statute against a baker, for baking meat and pastry for divers persons, his customers, for pay, was quashed, upon similar reasoning. "The laborious part of the community," said Lord Kenyon, "are entitled to some indulgence for the labours of the week past; and ought not to fare harder on a Sunday than on any other day. They must be fed;

^f Rex v. Cox, 2 Burr. 787.

many of them have not the means of dressing their dinners at home; and those who have would, if this act were prohibited, be prevented from observing the day." Mr. Justice Ashurst enforced this opinion by remarking that, "though by this means some few journeymen bakers were kept at work on the Sunday, it was for the general convenience of the public." And Mr. Justice Grose clenched the argument by the observation, "that, if on these grounds dinners were allowed to be dressed for the poor, how could it be endured that, when it was no crime to bake for them, the baker should be convicted, on a penal law, for baking for another person, who happened to be able to bake at home; a circumstance of which the baker could not be cognizant."* These cases seem to have led to the passing of the statutes for the regulation of baking on a Sunday, before noticed; and the first of which bears date the year after the decision in *Rex v. Younger*.

A. D. 1794.

But that act applies to all business done in the exercise of a man's ordinary calling on a Sunday, though not such as to attract observation;

A question of more extensive application was raised, at a more recent date, by Mr. Justice Bailey; viz., whether "the act extended further than to prevent labourers, handicraftsmen, and others, from exercising their ordinary employments in a way offensive to the eye, and with reference to the decent observance of the Sabbath." But

* *R. v. Younger*, 5 T. R. 449.

the case in which these remarks were made^b did not require the application of so broad a principle; and fell within the reason of the narrower doctrine; viz. that the act forbids only such business as is done in the exercise of a man's ordinary calling. That the statute ought to receive this degree of limitation is a conclusion justified by considering, "that though it does not apply to business not done in the exercise of a man's ordinary calling. an act, penal in its consequences, ought not to be so construed as to have an operation beyond the fair meaning; and it was not apparently its intention to include every description of business, and all descriptions of persons; if so, why was the enumeration of particular classes of persons adopted, when the simple expression of 'no person whatsoever' would so clearly and unequivocally have expressed the meaning."ⁱ But further than this it does not seem necessary to go, and in a later case Mr. Justice Bailey came to the conclusion, "that there was nothing in the act to show that it was passed exclusively for promoting public decency, and not for regulating private conduct; on the contrary, it expressly provides, 'that every person shall apply himself to the observation of the Lord's day, publicly and privately.'"^k Indeed

^b *Bloxome v. Williams*, 5 Dow. & Ry. 82; 3 B. & C. 232; See *infra*, page 269.

ⁱ *R. v. Whitmarsh*, 7 B. & C. 596; 1 M. & R. 452; and see Bailey's judgment in *Fennell v. Ridler*, 5 B. & C. 406.

^k *Fennell v. Ridler*, *u. s.*, and 8 Dow. & Ry. 804.

Mr. Justice Parke in one case expressed it as his opinion, that even the modified limitation of the statute to such business as fell within a man's ordinary calling was too extensive; and that the words "any worldly business" applied to any business he might carry on, whether in his ordinary calling or not."¹ But this view has not prevailed, and several cases have been decided upon the principles as we have just stated them.

Thus a contract for hiring a labourer is good, though made on a Sunday;

or for the sale of a horse by one person to another: neither being horse-dealers.

And a horse-dealer, with whom such a contract is made by one not a dealer, in ignorance of his being a horse-dealer, cannot set it aside on the ground that it was made on a Sunday.

Thus it has been held, that a contract for hiring a labourer might be lawfully made on a Sunday, for it could not be said to be part of the ordinary business either of master or servant.^m So a private contract for the sale of a horse belonging to a banker, made at a commission stable for the sale of horses by auction, was decided to be binding, because the sale of horses by private contract was not part of the ordinary calling of either party to the sale.ⁿ And even where a contract for the purchase of a horse was made by one who was not a dealer in horses, from a coach-master, who was also a licensed dealer in horses; a fact, however, of which the other party, who was the plaintiff, was ignorant, it was held, "that it would be contrary to all equity to allow a defendant, who alone had acted illegally, without the privity of the

¹ In *Smith v. Sparrow*, 4 Bing. 82.

^m *Rex v. Whitmarsh*, 1 Man. & Ry. 452; 7 B. & C. 596.

ⁿ *Drury v. Defontaine*, 1 Taunt. 131.

plaintiff, to set up that misconduct as a defence to the action: so that the court must have considered that the contract was not ipso facto void, because one of the parties to it made it in the exercise of his ordinary calling. The case however was not decided solely upon this ground, for, as the contract was not in writing, and the horse was not delivered till the Tuesday, until when, by the Statute of Frauds,^o there was no complete contract, the question was reduced to this; whether a negotiation for a sale on a Sunday would invalidate it, if completed on a day when the contract might clearly be lawfully made: a question which seems scarcely to admit of argument, but, at all events, is decided by this case in the negative.^p

On the other hand, it has been held that a horse-dealer who purchases a horse on a Sunday, can have no action on a contract for warranty; because it is an act done in the exercise of his ordinary calling.^q And, in like manner, a contract in writing for the purchase of hops, completed by an agent upon a Sunday, was held to be bad; though it was not known to the principal till a later day; and the goods were not to be delivered before a subsequent period; for the principal could not

But a horse-dealer who makes a purchase on a Sunday has no action for warranty;

and a contract for goods, if completed on a Sunday, is bad, though the goods are not to be delivered till a later period.

^o 29 Charles II. c. 3, s. 17.

^p *Bloxome v. Williams*, 5 Dow. & Ry. 82; 3 B. & C. 232; and see *Smith v. Sparrow*, 4 Bing. 82.

^q *Fennell v. Ridler*, 5 B. & C. 406; 8 Dow. & Ry. 204.

avoid the act of his agent ; and the purchase was made in the course of his ordinary business.^r

Several acts
done on the
same day
constitute one
offence only
under the 29th
Charles II.

One other point has arisen upon the act of Charles the Second, in reference to its prohibition of labour upon Sundays ; namely, whether each act must be taken to constitute a separate offence, or whether all together constitute one offence only. The courts have held that the latter opinion is the true one : and that the offence is one only : that, namely, of “ a man’s exercising his ordinary calling on the Lord’s day, whether that offence is of longer or shorter duration. It is not the idea of the act that if a tailor sews on that day, each stitch is a separate offence, or if a shoemaker or carpenter works for different customers at different times thereon, these are so many distinct offences.” Therefore the baking and selling divers rolls on a Sunday, was held to subject the baker to one penalty only ; and an action was sustained against a justice of the peace, who had imposed more than one penalty for the offence ; for he had no jurisdiction after imposing the first.^s

Rolls are
included in
the act.

From a reference made subsequently by Mr. Justice Buller to this case,^t we learn that a question was further raised therein, whether the prohibition against the sale of bread would include

^r Smith v. Sparrow, 4 Bing. 82.

^s Crepps v. Durden, Cowp. 640.

^t See Rex v. Younger, 4 T. R. 451.

also the sale of rolls; but so little weight seems to have been attached to this hair splitting, even by the counsel who urged it, that it can scarcely be said to have called for a decision.

No case appears to have come before the courts on the statutes subsequent to that of Charles the Second, relating to the regulation of labour on the Lord's day. But on the 3rd of Charles the First, The driver of a van is a carrier within the 3rd of Charles I. c. 2. two questions have been raised. The first, whether a driver of a van travelling between London and York, was a "carrier" within its provisions, which it was held he was.^u The second, whether they included the driver of a stage coach, which it was decided they did not. Indeed here, this But the driver of a stage coach is not within that act. statute has had rather a singular operation; that, namely, of exempting the stage coach driver from the general words of the statute of Charles the Second, which, as we have seen, would have included him in its prohibition against "tradesmen, artificers, workmen, labourers or other persons, exercising any worldly labour or business, or work of their ordinary callings." For as the statute of Charles the First was continued and ordered to be put in execution by that of Charles the Second, it is considered as therein embodied. Now it is a general rule, in construing an act of parliament, that, when general words follow particular ones, they are construed as applicable only to persons

^u E. P. Middleton, 3 B. & C. 164.

ejusdem generis. Therefore, as the act of Charles the First mentioned particular sorts of carriers only, among whom stage coachmen were not specified,—as indeed, unless the framers of the act had possessed the gift of foreseeing future inventions, they hardly could have been, since there were at that time no stage coaches,—the general words of the later act are held to be confined by the specific words of the earlier one, and stage coachmen allowed to exercise their ordinary calling without interference. So that a person who had booked his place to go from Clapham to London, by a coach which professed to run on a Sunday, was adjudged entitled to recover, against the coachman, the expense of hiring a postchaise, incurred in consequence of the non-departure of the coach.*

* *Sandiman v. Breach*, 7 B. & C. 96; 9 Dow. & Ry. 796.

CHAPTER VIII.

POSITIVE LAWS RESPECTING THE OBSERVANCE
OF FEASTS.

What excluded—Laws as to Fasting, why included—Lord's Day—Fasting—Apostolic Canons—Constitutions—Councils of Gangra—of Carthage, IV.—of Braga—of Cæsar Augustanum—Kneeling—Councils of Nice—in Trullo—Attendance at Church—Apostolic Constitutions—Councils of Eliberis—of Laodiceæ—in Trullo—of Carthage, IV.—of Toledo, I.—Apostolic Canons—Council of Antioch—Instruction—Council in Trullo—Examination of Prisoners—Law of Honorius—Council of Orleans, V.—Attendance at Church—Council of Rouen—Capitularies of Theodulphus—Council of Tours, III.—Capitularies—Articles of Regino—Councils of Coia—of Clovishoff—Constitutions of Egbert—Canon under Saxons—Synod of Exeter—Injunctions of Archbishop Arundel—Inquiries of Archbishop Cranmer—Laws of Edward VI.—of Elizabeth—Her Articles of Inquiry—Injunctions—Canons—Law of James I.—Laws as to Recusants—of Elizabeth—of James I.—Their Relaxation and Repeal—The Sabbath-day—Fasting—Apostolic Canons—Constitutions—Council of Laodiceæ—in the Great Week—Innocent I.—St. Augustine—Councils in Trullo—of Orleans, IV.—of Agatha—of the Lateran, V.—Services upon the Sabbath—Labour—Gregory the Great—Christmas-day—Fasting—Council of Braga—Easter—Quinquagesima—Easter Week—Councils in Trullo—of Macon—Fifth of November—Twenty-ninth of May—Observance of Festivals generally—Regino's Articles—Councils of Rouen—of Clovishoff—of Enham—Laws of Canute—Synod of Exeter—Laws of Henry VI.—of Edward VI. and Elizabeth—of James I. and subsequently.

FROM the point now reached in our inquiry, we return, according to the plan traced in an earlier portion of these pages, to follow down, in the same

What is not intended to be included in this chapter.

order as that pursued in our previous chapters, those regulations respecting the observance of holy seasons which have as their object to enjoin what ought to be done, rather than to prohibit what ought to be left undone at those periods. Before entering upon this inquiry it may, however, be useful to make two observations; the one upon that which will be found to be excluded, the other upon a particular class of laws included.

First, then, all regulations relating merely to the due performance of religious worship on holy seasons, by the officiating ministers, are excluded as foreign to our object; that being the investigation of such laws concerning those times as were generally applicable to all persons; whereas these regulations include one class of persons, the clergy only.

Laws enjoining fasting are included, and why.

Secondly. Among the laws enumerated in this chapter, will be found several relating to fasting in peculiar seasons. Now, it may at first sight appear that these laws more properly belong to the negative class; and that the command, not to eat flesh, should have been placed in connection with the command, not to work, or not to join in certain kinds of amusement. But we have been led to adopt the opposite arrangement for the following reason.

The prohibitions, with which we have been dealing in the earlier part of our treatise, as, e. g.,

that against working on holidays, were intended to keep away from the sacred seasons certain actions considered to be inconsistent with the due observance of them; but that observance did not consist in the not doing what by those laws was forbidden to be done, but in doing something else, which, it was thought, would not be done, if the forbidden acts were commonly practised. Whereas, in the seasons of fasting, the not eating flesh is the essential part of the thing to be observed; not indeed as the final end;—for that end, both in the feast and the fast has, we apprehend, never been placed by any reflecting Christian in the mere performance of the outward act of worship or of bodily discipline; the one and the other have always been considered as conducive to, and expressive of certain states of feeling;—but still, in seasons of fasting, the outward act to be performed, the final end, so far as externals go, is the abstinence from certain sorts of food; that abstinence, therefore, becomes a positive thing to be done, not a thing to be abstained from for the sake of doing something else; and so the regulations about it find their place more properly in this portion of our essay than in the preceding.

A similar observation may be made upon some other laws of an apparently negative character, as e. g. those against fasting on Sundays. They are, substantially, declarations of the manner in which

Other laws
apparently
negative, also
included.

the day ought to be observed, not attempts to remove hindrances to its due observance. Therefore, though drawn up in a negative form, we have treated them as of a positive nature, and consequently have assigned them a place in the present chapter. With these observations, we will pass to the consideration of the positive laws relating to the due observance of the Lord's day.

The Lord's day ordered not to be kept as a fast by the apostolic canons,

and constitutions.

By the council of Gangra, A.D. 324;

the fourth council of Carthage, A.D. 396;

The earliest of the regulations we have met with upon this subject relate to the festal character under which that day was to be regarded, as commemorative of the joyful event of the resurrection of the Lord. If any clergyman, say the apostolic canons,^a "fast on the Lord's day, let him be deposed; if any layman, let him be excluded from the communion." And an injunction to the same effect is twice repeated in the apostolic constitutions.^b

Not less decided is the council of Gangra.^c "If any one for the sake of supposed self-restraint,^d or contumacy, fasts on the Lord's day, let him be anathema." And the fourth council of Carthage enacts,^e that "whoever purposely fasts on the Lord's day shall not be considered a Catholic:"

^a Can. 65. Labbeo, i. 30; Bal. Can. Apos. 207.

^b ii. 59, vii. 24; Lab. i. 366, 502.

^c Can. 18; Lab. ii. 1095.

^d Propter continentiam quæ putatur.

^e Can. 64; Lab. iii. 947.

while 180 years later, we find the council of and that of Braga, in Gaul, repeating these anathemas, by a Braga, A.D. 563. canon, limited however to such as fast on that day, "because they do believe that Christ was born in the true nature of man."^f Here we find some intimation of the reason of these strong denunciations of a practice, at first sight, scarcely of sufficient moment to call for them. The practice was considered as a token of heresy, derived from the doctrines of Marcion and Priscillian, who are said to have held that the appearances of Christ had been illusions only; men supposing themselves to have seen what they had not.^g

With the extinction of these opinions, the practice growing out of them vanished also; and in later times, we find no new canons against fasting on the Sunday. But the *Decretum Gratiani* embodies a canon of a Spanish council of the fourth century,^h whereby it is enjoined that "no one should fast on the Lord's day, from fear, or persuasion, or superstition." So that the regulation thus passed into the commonly-received canon law.

From the custom of not fasting upon the Lord's day, we may pass to the custom of not kneeling on that day, but standing up to pray, in commemoration of the resurrection; a custom which appears

Reason of this prohibition.

A similar regulation made by the council of Cæsar Augustanum, A.D. 380, and embodied in the *Decretum Gratiani*.

Kneeling forbidden on the Lord's day by the council of Nice, A.D. 395;

^f Con. Bracarense, Can. 4; Lab. ix. 774.

^g Leo. Ep. ad Turribium, s. 4; Labbeo, v. 1293.

^h Con. Cæsar Augustanum, near Tarraco. De Cons. iii. 15.

and that in
Trullo, from
the previous
evening,
A.D. 691.

Query, how
far this pro-
hibition pre-
vailed in the
West.

to have prevailed in the Church from a very early period,¹ and was enjoined by the council of Nice.² The council, sometimes called the sixth general council, sometimes the council in Trullo, extended the injunction to the preceding evening, "from the evening entrance of the priests into the sanctuary, until the evening after the Lord's day;" for, as its canon goes on to explain, that "night was to be considered the forerunner of the resurrection of our Saviour, and from its commencement we are spiritually to look upon ourselves as having passed from darkness into light, and thence to date the commencement of our feast."¹ How far, however, this custom prevailed in the Western Church, it is more difficult to discover. Certainly, it does not appear to have been enjoined by any of the councils whose decisions had more especial relation to that portion of the world.

The ancient canons are not contented with prescribing the postures by which the congregation, when assembled, should indicate their participation in the joyful recollections associated with the Lord's day. They enforce also a regular and due attendance upon the divine service, and a frequent participation

¹ See fragment of Irenæus, quoted by De la Cerda, in Tertul. Op. i. 657; Tertul. de Cor. 3; Jerom. adv. Lucif. c. 4; Aug. Ep. 119, ad Januar. c. 15, 17, towards the end; Can. of Petr. Arch. of Alex. 15; Labbeo, i. 1170; Bal. Can. Apos. 902.

² Can. 20; Lab. ii. 667.

¹ Can. 90; Lab. xi. 982.

in the Holy Communion. Thus the so-called apostolic constitutions exhort all Christians, "On the Lord's day, which is the day of the Resurrection, to frequent the temple of the Lord more diligently, to glorify, by your praises, God who made all things through Christ, whom he sent to us, and permitted to die for us:"^m while a canon of the council of Eliberisⁿ directs the temporary exclusion^o from the Communion of such as, "though living in the city, shall not come to church during three successive Sundays." And that this was no mere local regulation is shown by the citation of this canon in the council of Sardica,^p and by the reference made to it in the 80th canon of the council in Trullo.^q

A regular attendance on the divine services on the Lord's day enjoined by the apostolic canons;

and enforced by the council of Eliberis, A. D. 305;

by a regulation recognized by the council of Sardica, A. D. 347, and the council in Trullo, A. D. 691.

Did these regulations aim at securing a regular attendance on the divine service, others sought to prevent that attendance from being nominal. Thus a canon of the fourth council of Carthage, which has found a place in the digest of Gratian, orders the excommunication of such as "shall leave the church while the priest is preaching."^r So the habit of coming to church without communicating is di-

And a partial attendance only, prohibited by the fourth council of Carthage, A. D. 436;

^m Apos. Const. ii. 59; Lab. i. 366.

ⁿ Supposed to have been in Granada. Can. 21; Lab. ii. 9.

^o *Paucis tempore abstineant.*

^p Can. 14; Lab. iii. 29.

^q Lab. xi. 978.

^r Can. 24; Lab. iii. 955; De Cons. i. 63, *Sacerdote autem.*

the first council of Toledo, A.D. 400 ;

the apostolic canons ;

and the council of Antioch, A.D. 341.

rected, by the first council of Toledo, to be punished, if persevered in after admonition, by exclusion from Communion. * In like manner the apostolic canons order the exclusion from Communion of such as should "enter the church and hear the Scriptures read, but should not continue during the prayers and the Holy Communion ;" a law which also has found a place in Gratian's work. † The council of Antioch is yet more severe against such offenders ; whom it directs to be "expelled from the church until they have made confession, and shown the fruits of repentance, and implored, and obtained forgiveness ;" while it forbids the holding meetings in private houses to pray for those who were thus excommunicate ; and,—that the exclusion from the Communion in one church might not be frustrated through the admission of the offender to the Communion in another,—enjoins that none should be admitted to partake of the Communion in any church but such as were accustomed to meet there for worship. ‡

Thus was it attempted to secure the due attend-

* Can. 13 ; Lab. iii. 997. See page 96.

† Apost. Can. 11 ; Lab. i. 31 ; De Cons. i. 61, Hoc quoque.

‡ Can. 2 ; Lab. ii. 1306. The church at which attendance was thus enforced was, it may be observed, a church subject to the episcopal authority in the district where it was situate. A layman who attended a separate congregation formed by any presbyter, "in contempt of his bishop," is directed by the apostolic canons to be "excluded from communion," after the third

The attending a congregation not under the authority of the bishop of the place forbidden by the apostolic canons,

ance of the laity at the churches on the Lord's day. That when they came they should find a public service in which to join, was so much taken for granted, that no laws are to be found to enforce its performance. But it is somewhat otherwise in respect to the instruction of those who might stand in need of it. The council in Trullo deemed it expedient to direct that the superiors of the churches should, every day, but "especially on the Lord's day, teach all the clergy and people the words of piety out of the divine Scriptures; reading the sentiments^x and judgments of the truth, and not transgressing the bounds handed down from aforetime, or the tradition of the divinely guided fathers." ^y

Canon of the council in Trullo, A.D. 690, as to the giving instruction on the Lord's day.

To these rules of ecclesiastical discipline we will add, before passing on to the positive laws of later times concerning the Lord's day, a law of civil regulation, dictated by the humane feelings which the Christian religion has ever fostered. "Let the judges," say the Emperors Honorius and Theodosius II., "on the Lord's day, cause the prisoners to be brought out of the gaols before them, and

Law of the Emperors Honorius and Theodosius II., A.D. 409,

admonition.—Can. 30; Lab. i. 35. And the council of Gangra anathematizes such as attempt "to hold a church without the Church, and to perform those things which appertain to the Church in the absence of a presbyter sanctioned by the bishop." —Can. 6; Lab. ii. 1095.

and the council of Gangra, circa A.D. 324.

^x Τὰ νοήματα.—Con. in Trullo, can. 19; Lab. xi. 951.

^y Τῶν θεοφόρων πατέρων παράδοσιν.

as to the examination of prisoners on the Lord's day.

question them: lest the corrupt keepers of the prisons should deny to the incarcerated what humanity requires. To those who have no means of support, let them allot an allowance of food, two or three pounds a day, or the allowance fixed by the regulations of the *Commentariensis*; ^a to whose account is to be charged the alimony of the poor, who ought to be taken to the bath under safe custody."^a Heavy fines are imposed upon the neglect of this duty: and the law concludes by observing: "Nor will the praiseworthy care of the ministers of the Christian religion be wanting to urge the constituted judge to the observance of this ordinance."^b

Not to be found in the code of Justinian;

but a similar provision made by the council of Orleans, V. A.D. 549.

This law did not find admittance into the code of Justinian, where, however, its place is in some measure supplied by another law, noticed in a subsequent part of these pages. But among the canons of the fifth council of Orleans, under Childebert, king of the Franks, is one which expressly throws upon the principal minister of the church of the place where prisoners were confined, for whatever cause, the duty of visiting them every Sunday, that "according to the precept of the

^a The officer who superintended the allowance of rations.

^a *Quorum sumptibus proficiant alimonix pauperum; quos ad lavacrum sub fidâ custodiâ duci oportet.*—C. Theod. ix. 3, 7, *Judices omnes Dominicis.*

^b *Nec deerit antistitum . . . cura . . . quæ ad observationem constituti judicis hanc ingerat memoriam.*—*Ib.*

Lord," their wants might be mercifully supplied out of the revenues of the Church.^c

Among the states which arose upon the ruins of the Western Empire, positive laws concerning the observance of the Lord's day have not been wanting. On that day, say the canons of the council of Rouen, held in the seventh century,^d "let all the people be admonished that they come to vespers and nocturns," *i. e.* matins, and to mass; and the canon goes on to direct that deacons, "truthful and fearing God," be appointed to summon to worship "the slothful and negligent," and report them to the ecclesiastical authorities if they would not come. "Every Christian man," says Theodulphus, bishop of Orleans, in his capitularies, "should come on the Sabbath day to the evening service;"^e he should come to vigils or matins on the Lord's day; he should come with an oblation to the solemnity of the mass." And a similar injunction is to be found in the canons of the third council of Tours. "On the Lord's day all Christians ought to persevere in the praise of God, and the rendering of thanks, until vespers."^f

Attendance at church on the Lord's day enjoined by the council of Rouen, A.D. 650;

by the capitularies of Theodulphus, A.D. 797;

by the council of Tours, III. A.D. 813;

So the Capitulary, before cited as enjoining the

^c Competens eis victus de domo ecclesiæ tribuatur.—Can. 20; Lab. xi. 132.

^d Con. Rotomagensis, C. 15; Lab. x. 1202.

^e Cum luminaribus, C. 24; Lab. xiii. 994.

^f Can. 40; Lab. xiv. 85.

and in the capitularies of the Frank emperors.

abstinence on the Lord's day from certain amusements, ^ε directs men, instead of these occupations, "to come to the priest, or to some wise and good man, that by their preaching and good sayings they may learn to use those things which pertain to the soul." ^h And it continues—"On that day or on the Sabbath let all come to vespers, and to matins and to mass, with their oblations, if they can, singing Kyrie eleison, ⁱ and let them chant Kyrie eleison, both in going and in returning. So also let the pastors of the flock do, both in going and in returning into the fields, or to their home, that all may know them to be in truth Christians, and devout." In conformity with these regulations we find the attendance at matins, mass, and vespers, on the Lord's days, among the points enumerated as subjects for inquiry by the ecclesiastical authority, in the Articles of Inquisition compiled by Regino, abbot of Prumio, in the 9th and 10th centuries; ^k an inquiry founded, indeed, upon the canons of the council of Rouen, already mentioned.

And the attendance there enumerated by Regino, abbot from A.D. 892—899; ob. A.D. 915, as a subject for inquiry;

and enjoined ^l by the council of Coia, A.D. 1030.

One hundred and fifty years later, the canons promulgated by the council of Coia, under the authority of Ferdinand of Castile, surnamed the Great, somewhat extend their requirements, warn-

^ε See page 220; Cap. vi. 205; Van Esp. i. 644; Lab. xv. 640.

^h Quæ ad animam pertinent utantur.

ⁱ Lord, have mercy on us.

^k Regino de Ecc. Dis. Inquisit. II. v. 57.

ing all Christians to come together to the church at vespers on the Sabbath, and on the Lord's day to hear matins, and all the hours.¹

If from these laws of other European countries we turn to our own, we shall find instances of a similar legislation. Thus, in the Saxon period, the council of Clovishoff, under Archbishop Cuthbert, after directing all abbots and presbyters, on the Lord's day, "to insinuate into the minds of those set under them,^m by preaching, and discourse upon the holy Scriptures,ⁿ the rule of a religious conversation; and good life," proceeds to decree, "that on that day the people should more often come together to the churches, at the invitation of the priests, to hear the Word of God,^o and should more frequent^p the sacraments of the mass and the words of doctrine."

and in England by the council of Clovishoff, A.D. 727.

A few years later, among the constitutions of Egbert, Archbishop of York, is to be found the canon of the council of Carthage, already mentioned, against leaving the church while the priest is teaching:^q while they enjoin that "nothing should be done on the Lord's day, but holiday be

Constitution of Egbert, A.D. 749, as to leaving church during the sermon; as to mode of keeping Sunday.

¹ See as to these, page 142.

^m Subjectis famulis.—C. 14; Spel. Con. i. 349.

ⁿ De Sacra Scriptura eloquiis.

^o Populus per sacerdotes Dei ad ecclesiam sæpius invitatus ad audiendum conveniat.—Ib.

^p Frequentius adsit.

^q Spel. Con. i. 266; Cons. 84

kept to God in psalms, and hymns, and spiritual songs." ^r

A canon of uncertain date, but anterior to the Conquest, as to times of attendance at church.

Attendance there enjoined by the synod of Exeter, A.D. 1287 ;

and by Archbishop Arundel, A.D. 1401, Henry IV.

Another canon, of the Saxon era, but of uncertain date, contains exhortations precisely similar to those which we have mentioned as contained in the capitulary of Theodulphus. ^s In the succeeding Norman period the canon of the synod of Exeter, to which reference has been previously made, ^t enjoins on all the parochial priests "diligently and efficaciously to move their parishioners, to frequent their church on the feast days, and specially on the Lord's days, to hear the divine office, and humbly to receive instruction in a right life. They who customarily shall absent themselves shall be punished by their local ordinaries." ^u And an injunction so similar in its import, that it seems needless to give it more in detail, is to be found among the exhortations given two centuries afterwards by Archbishop Arundel, to the clergy of his province generally. ^x

England does not furnish us with any further laws upon our present subject, from this period

^r Spel. Con. i. 104, p. 268.

^s Ib. 525 ; Can. 24, page 283.

^t See page 119.

^u Can. 2 ; Spel. ii. 372.

^x The people are to be exhorted on "the feast days, and specially on Sundays," to come "at least to high mass (missæ parochiali), and there do and hear what it becomes the Catholic sons of the Church."—Wilk. Con. iii. 266.

until the era of the Reformation; but thenceforward for many years we meet with an abundance of regulation.

Early in the reign of Edward the Sixth we find, among the Articles of Inquiry issued by Archbishop Cranmer, one which we insert here, though it goes somewhat beyond the mere attendance at church, aiming especially at the non-attendance of parties at their parish churches. The two requirements are indeed so much mixed up together in the laws which we are about to detail, that the attempt to separate them would lead to much, and, we think, useless repetition. The Archbishop inquires "whether any resort to any other church in contempt of their parish church." ^{Articles of inquiry, 2 Edw. VI. 1545, as to not going to the parish church.} It may be questioned whether the answer was very satisfactory: at least four years later the authority of the state was invoked to cure their neglect. ^{The resorting thither enjoined in the 6th Edw. VI., A.D. 1549.} "Whereas," says the act of Edward VI. for the uniformity of service throughout the realm, "there hath been a very godly order set forth by the authority of parliament for common prayer and the administration of the sacraments to be used in the mother tongue within the Church of England; agreeable to the word of God, and the primitive Church; very comfortable to all good people desiring to live in Christian conversation; and most profitable to the estate of this realm,

upon the which the mercy, favour and blessing of Almighty God is in no wise so readily and plentifully poured, as by common prayers, due using of the sacraments, and often preaching of the Gospel, with the devotion of the hearers;—and yet this notwithstanding, a great number of people in divers parts of this realm, following their own sensuality, and living either without knowledge or due fear of God, do wilfully and damnably before Almighty God, abstain and refuse to come to their parish churches, and other places where common prayer, the administration of the sacraments, and preaching of the word of God, is used upon Sundays: therefore be it ordained, That every person inhabiting within this realm, or any other of the King's Majesty's dominions, shall diligently and faithfully (having no lawful or reasonable excuse to be absent) endeavour themselves to resort to their parish church or chapel accustomed; or, upon reasonable lett thereof, to some usual place where common prayer and such service of God shall be used in such time of lett, upon every Sunday, then and there to abide orderly and soberly during the time of common prayer, preachings, or other service of God to be there used and ministered, upon pain of punishment by the censures of the Church." The due execution of these provisions was entrusted to the care of the "archbishops, bishops, and other their officers exercising ecclesiastical jurisdiction,"

And power
given to the
bishops, &c.
to enforce the
act,

who are empowered to enforce it, as well in places exempt as not exempt, within their dioceses. Full authority is given them "to reform, correct and punish by the censures of the Church all and singular the persons which shall offend within any of their jurisdictions, or dioceses, against this act, any other law, statute, privilege, liberty or provision heretofore made, had or suffered, to the contrary notwithstanding;"² while they are urgently charged which it greatly urges them to do. to endeavour "to the uttermost of their knowledges, that the due and true execution thereof may be had throughout their dioceses and charges, as they will answer before God for such evils and plagues, wherewith Almighty God may justly punish his people for neglecting this good and wholesome law."

The reign of Queen Mary suspended for the time this parliamentary discipline,^a but it was revived on the accession of Elizabeth, and enforced by the further provision, that the offence mentioned in the act should subject the offender for every repetition of it to a penalty of 12*d.*, to be levied by the churchwardens of the parish where it was committed, for the use of the poor, by distress upon the property of the offending party. For the better enforcement of this, with other matters contained

These provisions suspended in the reign of Queen Mary, but revived in that of Elizabeth, with the addition of a penalty of 1*s.* A.D. 1558.

² 5 & 6 Edw. VI. c. 1.

^a By the 1st Mary, sess. 2, c. 2.

And the offence made cognizable by the judges.

Provisions for enforcing attendance of the parishioners at their churches.

Injunction of the 13th canon of A.D. 1603.

in the act, the judges of assize are given a jurisdiction over all offenders against it, co-ordinate with that of the ecclesiastical officers; provision only being made that no one should be punished both by the justices and the ordinary.^b Nor was it intended that this law should be a dead letter. Articles of inquiry of the same date repeat the question put by Cranmer as to the non-attendance at the parish church :^c and the Queen's injunctions, published contemporaneously, provide for the appointment of "three or four discreet men which tender God's glory, and his true religion," to see that the parishioners come to church, and denounce those who do not;^d a duty cast by the canon of 1571 upon the churchwardens, while the ministers are charged to urge the duty of attendance upon their people.

To these regulations the close of the reign of Elizabeth added one of a more general character. The 13th canon enjoins upon "all manner of persons within the Church of England, to celebrate and keep the Lord's day, commonly called Sunday, according to God's holy will and pleasure, and the orders of the Church of England prescribed in that behalf, that is, in the hearing the word of God read and taught; in private and public prayers; in ac-

^b 1 Eliz. c. 2, s. 1, 2, 14—18, 24.

^c Sparrow, 180.

^d Ib. 178, Injun. 41.

knowledging their offences to God, and amendment of the same; in reconciling themselves charitably to their neighbours, where displeasure hath been; in oftentimes receiving the Communion of the Body and Blood of Christ; in visiting of the poor and sick, and in using all good and sober conversation.”^e

The penalties imposed by the act of Elizabeth upon the neglect to attend church were re-enacted by an act of James the First;^f and the payment of the penalty enforced, by the power given to any justice of the peace of the division within which the party shall dwell, to levy it by distress; or, in default of distress, to imprison the offender until payment shall be made: protection being, however, given to the latter, so far as that the time for calling any one in question for his default is limited to a month.

Jurisdiction to enforce the penalty for non-attendance at church.

Given to the justices of the peace by an act of James I., A.D. 1605.

Some time, however, before the passing of this act, alarm at the proceedings, partly of the Roman Catholics, and partly of those Protestants whose protest extended to the Church of England as well as to that of Rome, had led to the passing of laws imposing far severer penalties upon the non-attendance on the services of the Church of England, if regularly persevered in for any length of time; this being looked upon as a test of the adherence of

Acts aimed against Roman Catholics and Dissenters.

^e Wilk. Con. iv. 381. A similar canon was adopted in Ireland, A.D. 1634, Wilk. Con. iv. 496.

^f 3 James I., c. 4, s. 27, 28.

those guilty of it to the Roman Catholic, or some other form of Protestant belief. Thus, one act of

In A.D. 1561. Elizabeth ^g imposes a penalty of £20 a month on non-attendance at church for a month's space. A

In A.D. 1567. second ^h charges upon the lands of those liable to this penalty, even after alienation, the amount of fines due to the Crown, and makes two-thirds of the lands of any party guilty of neglect in paying them, forfeit to the Crown till the penalty be paid. A thirdⁱ

In A.D. 1593. imposes a penalty of £10 a month for "relieving, maintaining, keeping or harbouring" any person guilty of the same neglect, unless such as should stand within certain enumerated degrees of close relationship to the party; while it punishes the refusal to conform to the required attendance upon the services of the Church of England, and the urging other persons to refuse, by liability to imprisonment; and by requiring the guilty party, within three months after his conviction of the offence, to abjure the realm, or be accounted a felon.

Second act
of that year.

By a fourth act ^k "Popish recusants," convicted of non-attendance at church for the same space of time, are ordered to be confined to a circle of five miles from their own homes; and the same style of legislation prevailed in the following reign.

In A.D. 1604. The 1st of James, for example, brought with it a law declaring that all the acts of Elizabeth against

^g 23 Eliz. c. 4, s. 5.

ⁱ 35 Eliz. c. 1.

^h 29 Eliz. c. 6.

^k 35 Eliz. c. 2.

all manner of recusants be duly put in force; and extending the powers of the Crown over the lands of such as should make default in payment of the penalty incurred by their recusancy. So the 3d of the same reign enabled the Crown, if it chose, In A.D. 1605. to seize two-thirds of the lands of any party who should be liable to the £20 penalty imposed by the above-mentioned act of Elizabeth, and hold them until such party should conform to the requirements of the law in this respect; while it re-enacted the penalties before mentioned to have been imposed on maintaining or harbouring such recusants, extended them to the keeping such persons as servants, and limited yet more closely than the law of Elizabeth the number of excepted cases.¹

But these being laws intended, not to correct the negligent performance of an admitted duty, but to repress the growth or continuance of opinions contrary to those maintained in the formularies of the Church of England, do not appear properly to fall within the object of this treatise.

Without, therefore, giving any more detailed account of them, it seems sufficient to say, that, by the toleration act of the 1st William and Mary,^m they were relaxed as to all Protestant Dissenters, except such as "shall deny by word or writing the doctrine of the blessed Trinity," as it is declared in the Articles of the Church of England. And

Relaxation of these laws by the toleration act of the 1st William and Mary, A.D. 1688, except as to Unitarians;

¹ 1 Jas. I. c. 4; and 3 Jas. I. c. 4.

^m C. 18.

the conditions of relaxation were made more easy by two acts of the reign of George the Third.^o

and as to Unitarians, by the 53rd Geo. III. A.D. 1813; and as to Roman Catholics, in A.D. 1791;

The same favour was extended to the Unitarians by a later statute of the same reign.^p The 31st of George the Third, before mentioned, made also a material relaxation of these laws in favour of Roman Catholics; whom it exempted from their operation, on their making a declaration in some court of justice, of a nature which few of them, it is apprehended, would hesitate to make.

and in 1844 these acts repealed, except 5 & 6 Edw. VI. and 3 James I. so far as it does not relate to Roman Catholics. Effect of this.

And an act of a very recent date^q has repealed all the statutes of Elizabeth's reign, above-mentioned as endeavouring to enforce attendance at church. But it still leaves the liability to ecclesiastical censures, imposed by the 5th and 6th of Edward the Sixth, as stated above, resting upon all who are not in the habit of attending on the Lord's day the divine service at some church or chapel, or tolerated place of religious service. And it still leaves the same persons open to the penalty imposed, as before mentioned, by the 3rd of James the First, upon the neglect of attendance at church; and that,—unless some good cause be shown to the contrary,—“their parish church or chapel accustomed.” For it repeals the last-named act only “in so far as it relates to Popish recusants, and to compelling Roman Catholics to come to church;” and leaves

^o 19 Geo. III. c. 44, and 31 Geo. III. c. 12.

^p 53 Geo. III. c. 160.

^q 7 & 8 Vict. c. 102.

untouched the directions of the act of William and Mary, and the 31st of George the Third,^r whereby all laws made for the frequenting of the divine service on the Lord's day, are directed to be put in force against all offenders, except such as shall attend some congregation or assembly of religious worship, allowed by these or other acts of toleration.

From the weekly festival of the Lord's day the transition is natural to the second great weekly festival,—for such in the primitive Church it was, as we have already seen, accounted,—the Sabbath, or Saturday. As on the Lord's day, so on this, the Eastern Church strongly forbid fasting, it is said, in consequence of the doctrine of Marcion, who had taught that men should then fast in opposition to the God of the Jews, whom he denounced as a false God.^s Thus the apostolic canons direct, “that the clergyman found fasting on the Sabbath, except one only, should be deposed; the layman, be excluded from the communion.”^t And fasting on that day is prohibited by the constitutions.^u And the council of Laodiceæ includes the Sabbath with the Lord's day, among those on which it forbids fasting, even in Lent, on pain of

Fasting on the Saturday forbidden by the apostolic canons and constitutions,

and the council of Laodiceæ, A.D. 364.

^r C. 32, s. 9.

^s Epiphani. Cont. Her. i. 42; cf. Bing. xx. 3, 5, 6.

^t Can. 65; Lab. i. 30.

^u VII. 24; Lab. i. 502.

deposition for the clergy, and exclusion from communion for the laity.*

Exception of
the Saturday
of the Great
Week,

by the coun-
cil of Lao-
dicæa.

One Sabbath was, however, excepted; that, namely, of the great week, while Christ was in the tomb.† The “days of the passion of the Saviour,” says the council of Laodicæa, “the faithful ought to spend in fasting and prayer, and contrition of heart, until the mid-hour of the night of the great Sabbath, when they should cease their fast; the divine Evangelists, Matthew and Luke, the one, by the expression ‘in the end of the Sabbath,’‡ the other by that, ‘very early in the morning,’§ depicting the sluggishness of that night;”¶ and therefore the impatience of the disciples for its close; a feeling represented to their successors by the breaking off their fast before the night was at an end.¶

Hence cus-
tom in the
Western
Church of
fasting on
Saturday,
recom-

Out of this exception, however, arose in the Western Church, where the antagonism of Marcion was less strong, through the influence of Rome, the custom of observing the Saturday as a

* Can. 55; Lab. ii. 563; Bal. Can. Apost. 427.

† Apost. Can. 65, u. s.

‡ Math. xxviii. 1, ἐν τῇ σαββάτῳ.

§ Luke, xxiv. 1, ὀρθροῦ βαθίως.

¶ Can. 90, u. s.

¶ This appears to be an instance of that dramatic feeling, that living over again the life and sufferings of Christ, which forms so striking a feature of the services of the Roman Catholic Church. See Wiseman's Lectures on Passion Week, page 51, et seq.

fast. "There is no more reason," says Pope Innocent the First, "for fasting only once a year, in realization of the grief and fasting of the Apostles on the Saturday in Easter-week, than there would be for keeping the Lord's day only once a year."^d

mended by
Innocent I.
A.D. 416.

In the time of St. Augustine, this mode of observing the Sabbath had not yet spread even over all Italy; and the different customs which prevailed in this respect in different churches of that country, are cited by the holy father as an instance of a matter, in which it was the duty of Christians to conform to the practice of the place where they happened to be.^e

Varying cus-
tom in the
age of St.
Augustine.

But such moderate sentiments have not always been entertained on this point. The Eastern Church, in the council in Trullo, with special condemnation of the contrary custom of the Church of Rome, re-enacted the 55th canon of the council of Laodiceæ, cited above;^f while, on the other hand, the practice of Rome was made imperative where her authority prevailed. Thus,

Condemna-
tion of the
practice by
the council
in Trullo.

the fourth council of Orleans enjoined the continuance of the Lent fasts upon the Sabbath, unless where bodily weakness might prevent it, under the penalty of sacerdotal censure, as for a transgression of discipline.^g And the council of Agatha, some

Enforcement
of it by coun-
cil of Orleans,
A.D. 541,

and that of
Agatha, A.D.
506,

^d De Cons. iii. 16.

^e Ad Januarium Ep. 119; Dis. xii. 11.

^f Con. in Trullo, can. 55; Lab. ix. 970.

^g Can. 2; Lab. ix. 114.

and the 26th
Lateran
council,
A.D. 1678.

years earlier, enjoined fasting every day in Lent except Sundays:^b while a council, held in the eleventh century, under Gregory the Seventh, declared, "since the Sabbath" (so runs its decree) "has been kept as a day of abstinence amongst our holy fathers, we, following their authority, wholesomely admonish whoever desires to be a partaker of the Christian religion, to abstain from eating flesh on that day, unless some of the greater festivals should fall upon it, or he is impeded by bodily weakness."ⁱ

Public wor-
ship upon the
Saturday en-
joined by the
apostolic
constitutions;

and men-
tioned as a
customary
time of com-
munion;

but the pro-
hibition of
labour there-
on con-
demned by
Gregory I.
A.D. 603.

In other respects the Saturday is little distinguished by positive ecclesiastical regulations. The apostolic constitutions do indeed class it with the Lord's day, as one on which "the Christians should more diligently frequent the temple of the Lord," for the reasons already assigned in treating of the Lord's day.^k And it is enumerated by St. Basil, as one of the four days in the week on which the communion was customarily received.¹ But no other positive law respecting its observance has come within our observation, except in so far as an ordinance of Gregory the First, censuring "as bad and contrary to the holy faith, the prohibition of labour on that day," may come under this class.

^b C. 12 ; De Cons. iii. 15 ; Labbeo, ix. 514.

ⁱ Can. 7 ; De Cons. v. 31 ; Labbeo, xx. 510.

^k See page 278.

¹ Bas. Ep. 289. The others were Wednesday, Friday, and the Lord's day.

The insisting upon such a restriction is indeed classed by him among the doctrines of Antichrist; who would, thought Gregory, extend to the Saturday that command to do no work, which, as we have seen,^m he supposed that this opponent of the truth would also insist upon in respect to the Lord's day.ⁿ

We pass, therefore, to the consideration of such regulations as relate to the observance of the festivals of less frequent recurrence.

Of these Christmas-day, like Sunday, was forbidden to be kept as a fast by the council of Braga; which anathematized such as "did not duly honour the birth-day of Christ, according to the flesh, but pretended to honour it by fasting on that day;"^o a practice attributed by this canon and by Pope Leo the First, in his letter to Turribius,^p to the same conception which led to the practice of fasting on the Lord's day, namely, the belief that Christ was not truly born in the nature of man. But as the practice probably became extinct in later times, no repetition of this canon has come within our observation. Nor are we acquainted with any other positive regulations specially affecting the observance of Christmas.

Fasting on Christmas-day forbidden by the council of Braga, A.D. 562.

^m See page 94.

ⁿ De Cons. ii. 12, Pervenit ad me.

^o Con. Bracarense. Lab. ix. 774, can. 4.

^p Labbeo, v. 1293; Ep. 15.

As to Easter, and the period from thence to Whit-Sunday.

The next great feast, that of Easter, and the whole quinquagesimal interval between it and Pentecost, was considered by the ancient Church as one continued festival; wherein a custom, which, however, does not seem to have ever passed into a canonical regulation, required that none should bend the knee, but that prayers should be offered up standing, in token of the resurrection.^a And the same feeling led them to suspend in that period the weekly fasts of Wednesday and Friday.^r More peculiarly, however, was this the case with the week following Easter, that week wherein, as we have before mentioned,^s those newly baptized at that great festival continued to wear the white robes, the token of their Christian purity. These days we have seen the council in Trullo enjoining to be spent in prayers and praises:^t while in the Western Church, a council of earlier date urges, "on these six most festal days, all to come together, and giving vent to paschal hymns, to show their perseverance by daily sacrifices, praising the Creator and Redeemer, at vespers, and matins, and mid-day;"^u a precept which would appear to be

Directions as to the observance of Easter-week by the council in Trullo, A.D. 682, and the council of Macon, A.D. 585,

^a See Tertul. de Cor. Mil. 3; Irenæus frag. 2, τὸ πρὸς τὸ πᾶσι λαλῶν, quoted by La Cerda, ad. op. Tertul. i. 658; Epiphanius Con. Heres. iii. 2, ad fin.

^r Epiphanius. u. s.

^s See page 10.

^t See page 215.

^u Con. Matisconense II. Can. 2; Lab. ix. 947.

the more full expression of a concise direction in the capitulary of Theodulphus, "that all the days of the paschal week are to be observed with equal reverence."^v But we have not found any further regulations regarding the observance of this season, or any other one festival in particular of those generally celebrated by the Church.

The lapse of time brought, however, in England special occasions, when by parliamentary authority the attendance of all loyal subjects at certain newly-ordained festivals was required; the first, in the date of its institution, being the "public thanksgiving to Almighty God, every year on the 5th of November:" that day, whereon, as the act ordaining the celebration of the feast^x tells us, "many malignant and devilish Papists, Jesuits, and Seminary Priests,"—much envying and fearing "the blessings enjoyed by England, in having the true and free profession of the Gospel, under the most great, learned, and religious King that ever reigned therein,"—determined to blow up the place and persons, where and by whom what they "falsely and slanderously termed cruel laws, enacted against them and their religion," had been made: a plot which "would have turned to the utter ruin of this whole kingdom, had it not pleased Almighty God,

and by Theodulphus, bishop of Orleans, A.D. 797.

Appointment of the 5th of November as a day of thanksgiving, when all persons required to go to church. A.D. 1605.

^v Cap. 41; Lab. xiii. 1005. The same capitulary enjoins all to communicate on Easter-day, as does the rubric to our Book of Common Prayer.

^x 3 James I. c. 1.

by inspiring the King's most excellent Majesty with a divine spirit, to interpret some dark phrases of a letter, above and beyond all ordinary construction, and thereby miraculously to discover this hidden treason, not many hours before the time appointed for the execution thereof." To the end, therefore, "that unfeigned thankfulness may never be forgotten, and that all ages to come may yield praises to God's divine Majesty for the same, and have in memory this joyful day of deliverance," the act proceeds to direct—all ministers of the Church of England always, on the 5th of November, to "say morning prayer, and give unto Almighty God thanks for it;" giving warning publicly the Sunday before, at morning, of the observance of the day—"and all persons inhabiting this realm of England, and the dominions thereof, always, upon that day, diligently and faithfully to come to church, and there to abide orderly and soberly during the time of the said prayers, preaching, or other service of God, there to be used and ministered."

Similar injunction with respect to the 29th of May.

No especial penalty is attached to non-attendance, but the general words of the statutes to be mentioned subsequently, seem sufficient to include this and the next festival. That festival, in respect to the celebration of which similar directions are given, is the 29th of May: a day wherein,—according to the act of parliament appointing it to be kept,—

“Almighty God, the sole disposer of all earthly crowns and kingdoms, by his all-swaying providence and power, miraculously demonstrated, in the view of all the world, his transcendent mercy, love and graciousness towards his most excellent Majesty, Charles the Second, by his most wonderful, glorious, peaceable and joyful restoration to the actual possession and exercise of his undoubted hereditary, sovereign and regal authority, over his dominions: through the unanimous, cordial, loyal votes of the lords and commons, in this present parliament assembled; and passionate desires of all other, his Majesty’s subjects:—a day therefore, the most memorable birthday, not only of his Majesty both as a man and prince, but likewise as an actual king of this and other his dominions, all in a great measure new born, and raised from the dead on this most joyful occasion.”[†]

With these laws, our enumeration of the regulations specially concerning the observance of particular festivals concludes. For the direction to perform a certain thanksgiving service on the day of the accession of the sovereign, not being coupled with any injunction on the people to attend its performance, does not fall within the scope of this essay. But there still remain to be noticed certain general laws relating to the observance of all the chief festivals.

[†] 12 Car. II. c. 14. .

These do not indeed go back to so early a time as those which have formed the subject of our last inquiries; for although, as has been shown in an earlier part of this work, a long list of festivals are enumerated from a very early period, as specially observed among the Christians, yet,—either from reluctance on the part of the ecclesiastical authorities to make the observance of them compulsory, or, as is perhaps more likely, from the universality with which they were generally observed,—no regulations calculated to enforce their observance have come to our knowledge.

Attendance at church on the principal festivals made a subject of inquiry, circa A. D. 900, in Regino's articles,

and enjoined by the council of Rouen, A. D. 690.

and by that of Clovishoff, A. D. 905.

The middle ages are somewhat more prolific. Thus Abbot Regino enumerates the attendance at matins, mass, and vespers, on the principal festivities, as well as on the Lord's day, as points for investigation by the bishop, archdeacon, or archipresbyter.² And the rule is founded upon the same canon of the council of Rouen, to which we have already referred,^a as making a similar regulation in respect of the Lord's day. Similar directions are also given for enforcing it. So the canons of the council of Clovishoff include the "other greater festivals," with the Lord's day, among those on which, as we have seen above,^b the clergy are enjoined to be more diligent in teaching, and the people to be more regular in their attendance upon

² Reg. de Ecc. Dis. Inq. II. v. 57.

^a Page 283.

^b See page 285.

"the words of instruction, and the sacrifices of the mass."^c The council of Enham, though particular, as we shall see hereafter, in enjoining the observance of the fasts antecedent to the feasts of the apostles, says nothing of the observance of the feasts themselves; though the "high feast of the holy Mary" it directs "all carefully^d to honour, first by a fast, and afterwards by attendance on the services."^e The laws of Canute are, however, more comprehensive. "All divine rights,^f and offices, let every one," he decrees, "studiously keep and observe; the feast days and the fasts, let him celebrate with the utmost ceremony."^g

But not mentioned by the council of Enham, A. D. 1009,

except that of the Virgin Mary.

However their observance enjoined by the laws of Canute, circa A. D. 1032,

In the period after the Conquest, the synod of Exeter, like the council of Clovishoff, includes the "festival days," with the Lord's days, among those when the people ought specially to attend the churches.^h And Ascension day, the feast of Corpus Christi, the high feast of the Assumption of our blessed Lady, and All Saints' day, are, as we have seen,ⁱ included, with the Lord's days, in the 27th Henry VI., in the list of days whereon the holding of fairs is prohibited. But besides these laws, we are not

and the synod of Exeter, A. D. 1287.

And certain of them mentioned in the 27th Henry VI., A. D. 1450.

^c Can. 14; Spel. Con. i. 349.

^d Cautius.—Can. 15; Spel. Con. i. 518.

^e Celebritate.—Ib.

^f Jura.—Laws of Canute, c. 14; Spel. Con. i. 546.

^g Summâ cum ceremoniâ celebrato.—Ib.

^h Can. 22; Spel. Con. ii. 372.

ⁱ See page 123.

The "due" observance of festival days enjoined by the mandate of Islip, A. D. 1365, and the laws of Edgar, A. D. 607.

The attendance at church on holidays enjoined at the Reformation. Dropped in the reign of James I.

Alteration made by the 7 & 8 Vict. c. 102.

aware of any antecedent to the Reformation, which do more than enjoin a "due" observance of festival days, as is the case, e. g. with the mandate of Archbishops Mepham and Islip before cited,^k and the general direction in the laws of Edgar, that "the days other than the Lord's days, as they are announced by the priest, shall be kept as sacred."^l

The acts by which at the Reformation it was attempted, as we have seen, to secure the due attendance of the people upon the remodelled services, include "the other days ordained and used to be kept as holidays."^m But the application of their provisions to the attendance upon other holidays than Sundays, seems to have been pretty soon dropped. The statute of James the First,ⁿ re-enacting the penalty of 1s. for default in attendance at church, is limited to Sundays; and the latter day alone is mentioned in the acts of William and Mary, and George the Third;^o by which exceptions in favour of dissenters from the Church of England were introduced. The repeal of the act enjoining attendance at church on the fifth of November, so far as Roman Catholics are concerned, by the late statute, before noticed as removing the

^k See page 133.

^l Spel. Con. i. 445, ch. 5.

^m 5 & 6 Edw. VI. c. 1; 1 Eliz. c. 2, s. 14; 23 Eliz. c. 1, s. 5.

ⁿ 3 Jas. I. c. 4, s. 27.

^o 1 Will. & Mary, c. 18, and 31 Geo. III. c. 32.

penalties to which they stood exposed up to the year 1844,^p must therefore be looked upon, more as a piece of consistency in legislation, than as the removal of even a possible grievance. And a somewhat similar remark may be made in respect to members of the Church of England, upon the total repeal of the 1st of Elizabeth above mentioned, so far as concerns the penalty of 1s., for non-attendance at church on holidays. As the statute of James applies solely to Sundays, there is now no civil punishment left for this neglect: though it would appear to remain punishable, under the 5th and 6th of Edward VI., by ecclesiastical censures.

^p 7 & 8 Vict. c. 102.

CHAPTER IX.

POSITIVE LAWS RELATING TO THE OBSERVANCE
OF FASTS.

Lent—Duration of—Apostolical Canons—Constitutions—Councils of Orleans, IV.—I.—Regulations of Gregory I.—Manner of keeping Lent in the time of Socrates—Council of Laodicea—Regulations of Gregory I.—Council of Toledo, IV.—Capitulary of Theodulphus—of Nicholas I.—Anglo-Saxon Canons—Length of the Fast on each day—Council of Chalons—Constitutions of Theodulphus—of Nicholas I.—Councils of Cesar Augustanum—of Braga, III.—The Great Week—Councils of Laodicea—of London—in Trullo—of Toledo, IV.—Absolution of Penitents—Ordinance of Innocent I.—Services on Good Friday—Pardon of Prisoners—Laws of the Emperors—Subsequent Practice—Crimes in Lent—Laws of Canute—of Alfred—Constitution of Theodulphus—Truce of God—Ember Weeks—Councils of Gerunda—of Toledo, V.—VI.—of Clovishoff—of Mayence—Capitularies—Councils of Seligenstadt—of Oxford—Constitutions of Alexander of Coventry—The Prayer Book—Fast before Christmas—Councils of Tours—of Macon—of Enham—Constitutions of Alexander of Coventry—of Cardinals Theodosius and Albert—Rogation Days—Councils of Orleans I.—of Clovishoff—Laws of Alfred—of Athelstan—The Prayer Book—Greater Litanies—Councils of Mayence—of Clovishoff—Ordinance of Henry VIII.—Vigils—Councils of Eliberis—of Carthage, III.—of Laodicea—Turned into Fasts—Council of Auxerre—Constitution of Nicholas I.—Council of Enham—Law of Canute—Council of Oxford—Law of Edward VI.—Wakes—Book of Sports—Canon of 1536—Fasts on Wednesdays and Thursdays—Apostolic Canons—Canons of Peter of Alexandria—Examination of Prisoners—Law of Justinian—Canon in Decretum Gratiani—Friday—Constitution of Nicholas I.—Council of Enham—Law of

Canute—Saturday—Laws of Edward VI.—of Elizabeth—Fasting generally—Councils of Lyons—of Berkhamsted—Treaty between Edward the Elder and Guthurn—Constitutions of Odo—Law of Edgar—Council of Enham—Laws of Canute—of Henry VIII.—Cranmer's Visitation Articles—Laws of Edward VI.—of Elizabeth—Mandate of Archbishop Whitgift—Law of James I.—Proclamations of James I.—of Charles I.—Statement of Cases on the Laws in the last two Chapters.

IN our last chapter we have been occupied with the positive laws relating to the observance of feast days. It still remains to trace the regulations concerning the observance of days of fasting. These, inasmuch as they are less congenial to the dispositions of the greater number of mankind, than the former, have been more often commanded to be observed; no doubt because their observance was more commonly neglected. Like the feasts, they are divisible into such as are of weekly recurrence, and such as recur at longer intervals; but, as the latter fasts were of a severer kind than the former, and are more connected, at least in the minds of the greater number of Englishmen of the present day, with the idea of fasting, we propose to treat of the fasts in the reverse order to that adopted by us in treating of the feasts, and to take the less frequently recurring, but better known, periods of fasting, before those of weekly, but less noted, observance. We begin therefore with Lent.

We have seen in an earlier part of these pages, that the time during which this great season of

General
remarks upon
the laws as to
fast days.

Time during
which Lent
to be kept
not fixed in
the age of
Socrates, fl.
A. D. 443.

Injunction of
the Apostolic
Canons.

abstinence was to be continued, remained, even so late as the age of Socrates and Sozoman, in a state of much uncertainty, and varying observance.^a

The so-called Apostolic Canons enjoin, indeed, the observance of a quadragesimal period,^b under the penalty of deposition for the clergy, and exclusion from the Communion for the laity; but whether by the word quadragesima their author understood a period of forty days, according to the later, or forty hours, according to what appears to have been the earliest practice, is left by them uncertain. The Constitutions are more precise: for they specify that the fast was to be continued from the second to the sixth day of the week, a regulation which implies necessarily a fast of more than forty hours;^c

No canon of
Eastern
Church fixing
the time.

But the 4th
council of Or-
leans, A. D.
541, enjoins
the keeping
forty days;

but we have not met with any early canon of the Eastern Church which precisely fixes its duration.

It is otherwise in the West. By the middle of the sixth century, we find the fourth council of Orleans decreeing, that the "quadragesima should be kept by all the churches equally, nor should any priest presume to appoint a quinquagesima, or a sexagesima, before the passover."^d And that this was a period of days, and not of hours, is clear, from the canon proceeding, as we have before noticed,^e to direct that the fast shall be continued

^a See page 13.

^b Sanctam paschæ quadragesimam.—Can. 69. Lab. i. 43.

^c Apost. Cons. v. 12; Lab. i. 423.

^d Can. ii. Lab. ix. 114.

^e Page 297.

through the Saturdays, though it may be suspended on the Lord's day; because "the ordinances of the fathers specially permit this to be done." The same regulation, that the fast should be of forty days, and not a longer period, is to be found in the general body of the canon law, extracted indeed from a council held also at Orleans thirty years before that just referred to:^f though the clergy,—by a regulation of Gregory the First, which also finds a place in the *Decretum Gratiani*,—are allowed to begin their fast from Quinquagesima Sunday so as to fast seven weeks: "that they may add somewhat to the strict requirements^g of the sacred institution;" and precede "the observances of those who remain in the order of the laity in devotion, as they had precedence of them in place."^h

and the same regulation is in the *Decretum Gratiani*, from a canon made A. D. 511, by the first council of Orleans. But the clergy allowed by Gregory I. A. D. 590—604, to fast from Quinquagesima.

The West and East agreed in excepting the Lord's days from the period of fasting, whatever might be its length.ⁱ The difference between them as to Saturday has been already noticed. In the middle ages, the time during which the Lent fast was to be continued, appears to have been too

The Lord's day excepted.

^f 24th Can. of 1st Council of Orleans. Lab. viii. 355; De Cons. iii. 6.

^g Ad pensum.—Dis. iv. c. 4.

^h Et eorum qui in laico ordine consistunt observantiam sicut loco, ita religione præcedant.—Ib.

ⁱ Council of Laod. can. 50; Lab. ii. 563; 4th Council of Orleans, can. 2; Lab. ix. 114; De Cons. v. 16; Gregory I. Hom. xxiv. 3, 9; Council of Agatha, can. 12, A. D. 506.

universally agreed upon, to call for any canonical regulations.

Regulations
as to the
mode of
fasting.

As the duration, so the manner of keeping this period of bodily denial called forth at different times in the ancient, and still more in the mediæval Church, various regulations.

Diversity of
practice in
this respect
in the time of
Socrates, *fl.*
A. D. 443.

In the earlier times, and indeed until as late as the age of Socrates, considerable diversity of practice appears to have prevailed among the Christians body in this respect.

"They not only differ," says that writer, "as to the number of the days, but follow a varying rule in respect to the abstinence from food. For some abstain from every kind of animal flesh; others eat, of animals, fish only; others, besides fish, eat birds also, alleging that these too, according to the account of Moses, sprung out of the water. Some abstain from hard skinned fruits, and eggs: some live on dry bread alone, and some do not even eat this. There are those who keep their fast till the ninth hour, and, after that, use various kinds of food; different rules of fasting prevail amongst different nations, for reasons almost innumerable."^k From this diversity of practice, Socrates infers the absence of any common apostolic regulation upon the subject.

The council
of Laodiceæ,
A. D. 364,
prohibited
eggs and
cheese;

However the council of Laodiceæ had endeavoured in some respects to supply this deficiency,

^k Soc. vi. 21; cf. Bing. xxi. 1, 15.

by prohibiting the eating of eggs, or cheese, as connected with animal life,¹ under the penalty of deposition for the clergy, and exclusion from the communion for the laity.^m A similar prohibition, including also milk, is found among the regulations of Gregory the First, and forms one of the canons in the digest of Gratian.ⁿ The use of fish however it allows to Christians, but "as a solace for bodily weakness, not to feed the flames of appetite."^o And those who abstained from flesh were cautioned not to serve up banquets of the more costly kinds of sea animals. Against the use of flesh during the season of Lent, the fourth council of Toledo, held not long after the age of Gregory, is most energetic in its denunciations. "Whoever," say its canons, "without inevitable necessity, and manifest languor produced by weakness, or the inability arising from the time of life, shall dare to use flesh during the days of Lent, let him be an alien from the communion of the sacred day of the Lord's resurrection.^p And this penalty shall be heaped upon upon him, that he deny his palate, during the

and these, with milk, prohibited by Gregory I. A. D. 590—604; who allows fish, so that it be not made a luxury.

The use of flesh strongly denounced by the fourth council of Toledo, A. D. 633, except from age or weakness;

¹ And therefore, it should seem, by implication, all animal flesh.

^m 56th can. ; Lab. ii. 563.

ⁿ Dist. iv. c. 4, s. Denique.

^o Ut infirmitatis solatium non luxuriæ pariat incendium.—Ib.

^p Can. 8 ; Lab. x. 1206. The canon declares such a person also "reus resurrectionis dominicæ," a phrase to which the writer is unable to attach any distinct idea.

and not then
unless per-
mission be
first obtained.

whole Easter season, all use of flesh, since he has been forgetful of discipline during the sacred days of abstinence. Those too, whom either age bows down or weakness wastes away,^q or necessity prevents, let them not presume to violate this prohibition, before receiving permission of the priest." But the restrictions of this council, though thus energetically enforced, are not extended beyond the use of flesh ; and fall short therefore of the measure of denial prescribed by Gregory, and the council of Laodicæa.

Capitularies
of Theodul-
phus, A.D.
797, recom-
mend the
complete ab-
stinence from
animal food
as a great
virtue.

Between these canons and one to be found in the capitularies of Theodulphus, Bishop of Orleans, —but adopted, as we have before seen to have been the case with other canons of that bishop,^r by our Anglo-Saxon ancestors,—we have not met with any relating to the kind of abstinence due to the season of Lent. And this canon proposes the complete abstinence from animal food at that season, rather as a high virtue to be striven after, by those who would attain to it, than as a matter of universal obligation. "Abstinence," it says, "during these days, there ought to be from almost all delicacies; and men should live soberly and chastely. He indeed who can abstain from eggs, cheese, fish, and wine, is of high excellence.^s But whoever, either

^q Languor extenuat.—Ib.

^r See page 105.

^s Magnæ virtutis.—Lab. xiii. 1005 ; Spel. Con. i. 614, c. 40.

from bodily weakness or from being engaged in any work, is unable to abstain, let him only make a custom of solemnly keeping the fast until vespers, and take wine not to intoxication, but for the refreshment of his body." This degree of fasting, however, the good Bishop most emphatically requires in Lent on all but the Lord's day. "In other seasons," he says, "in a time of dearness the fast is wont to be broken off; but in Lent this ought on no account to be done. In other times it is left to a man's will whether or no he should fast; in this, not to fast is to break the commandment of God. In other times, to fast is to gain the reward of abstinence; in this whoever, except little children and sick persons, does not fast, draws down punishment upon himself; for these days the Lord, both by Moses, and by Elias, and by Himself, consecrated to a holy fast."^t

Scarcely less emphatic is Pope Nicholas the First, in his directions to the Bulgarians upon the subject of fasting; which, however, as they are not, like those of Theodulphus just quoted, confined to Lent, will find their place more properly in a subsequent part of these pages.

In the Anglo-Saxon age we find the constitutions of Odo,^u enjoining the observance of Lent as a fast "with great vigilance;" and the laws of

but enjoin
abstinence
till vespers,
and require
a strict ob-
servance of
the fast,

as does Pope
Nicholas I.
A.D. 860.

The constitu-
tions of Odo,
A.D. 943,
and the laws
of Canute,

^t Cap. 37; Lab. xiii. 1005.

^u Spel. Con. i. 413.

A.D. 1032,
generally en-
force fasting
in Lent, but
without going
into details.

Canute, ordering it to be kept "most religiously;"* but neither enter into any details as to the manner of keeping it.

The period intervening between the Norman Conquest and the Reformation is not productive, so far as we are aware, of any regulation upon our present subject; and the regulations put forth on this matter by the Reformers, find their place more appropriately in a subsequent part of this essay. We therefore return to more ancient times, to mention certain other canons relating to the observance of Lent, which we have passed over.

The council
of Chalons,
A.D. 630,
ordains the
keeping of
the fast till
vespers; also
attendance at
church, and
almsgiving;

The first concerns the length of the fast on each particular day of fasting. No early regulation of the Eastern Church upon this point has come to our knowledge. But in the West, the council of Chalons, by a canon, which Gratian recognizes as part of the universal canon law, enacts, that fasting in Lent shall not be counted unless continued till after vespers. For "mass is to be attended, and when the solemnities of the mass and the vesper offices have been heard, and alms have been distributed, it is allowable to eat."† This canon forms one of the capitularies of Theodulphus,‡ who adds, "that if any one is inevitably prevented from attend-

* Spel. Con. i. 546, c. 16.

† Con. Cabillonense, can. 5; Lab. x. 1196; De Cons. i. 50, Solent.

‡ Cap. 39; Lab. xiii. 1005.

ing mass, he may be allowed to end his fast at the time when he calculates the vespers to be over, after he has ended his prayers." The canon itself without this addition forms the first part of the Anglo-Saxon rule, cited above^a as copied from the capitulary of Theodulphus. But that rule contains also a further direction, enjoining a constant attendance on the divine service, and almsgiving during Lent, as forming, in addition to abstinence from food, a part of its due observance.

and so does
the Anglo-
Saxon canon
taken from it:

and the canon
of Theodul-
phus cited
above.

Both duties—that of attending the divine service, and that of giving alms in Lent—form distinct subjects of direction in the capitularies of Theodulphus. Respecting the latter, he enjoins the distribution to the poor of the meat and drink which would have been used up, had no fast been kept; for “to fast, and keep the dinner to supper-time, is not to increase our reward, but to save our provisions.”^b Respecting the former, he enjoins that the “Sacrament of the body and blood of Christ be taken, by all, every Lord’s day in Lent, and on the Thursday, Friday, and Saturday in the Great Week.”^c An injunction, however, which, if more positive in its frame, is less extensive in its import, than that of Nicholas the First to the Bulgarians

Rule of Theo-
dulphus as to
almsgiving in
Lent;

as to receiv-
ing the com-
munion.

Similar ex-
hortation of
Nicholas I.
to the Bulga-
rians.

^a At page 314.

^b Non mercedis sed ciborum est incrementum.—Cap. 37; Lab. xiii. 1005.

^c Cap. 41; Lab. xiii. 1005.

fifty years later, whom he "earnestly exhorted, and prayed to God that they might have grace, to communicate every day in Lent." With these injunctions we may compare a canon of much earlier date, which, as quoted by Gratian, relates to the attendance on that season at the public services of the Church. "Let not the faithful," it says, "in the days of Lent be wanting in the churches, nor let those who continue under a suspicion of heresy, remain in their secret cells among the mountains, but let them follow the example and precept of the priests; and let them not come together to other villages to hold meetings. All the bishops have said anathema to whoever has committed these things."^a

A canon of the council of Cæsar Augustanum, A.D. 380, enjoins attendance at church during Lent;

and one of the council of Braga, III. A.D. 572 enjoins litanies in its commencement.

A canon of the third council of Braga enjoins also, that in the commencement of Lent the clergy and people of neighbouring churches should meet, and institute processions of persons chanting litanies, during the three first days of Lent; and on the third day, about the ninth or tenth hour, mass should be performed, and the people dismissed with an injunction to keep the fast;^b but the rule does not appear to have been of more than local observance.

^a Con. Cæsar August. near Tarracona, c. 4; Labbeo, vi. 34; De Cons. iii. 15. Originally it appears to have related to the 21 days preceding the Epiphany. See page 299.

^b Con. Bracar. III. c. 9. Lab. ix. 840.

These are all the canons or regulations with which we have met, specially directed to the general observance of Lent. But there are still some which call for our notice relating to its last week, the Great, or, as we now call it, Passion Week.^f

Here again the council of Laodicæa leads the way, in a canon already cited by us in treating of the observance of the Saturday,^g to which we may add a canon of later date and of our own country,

Canon of the council of Laodicæa, circa A.D. 364, as to the Great Week.

enjoining that "the holy day of the preparation, whereon our Saviour, our Lord Jesus Christ, for the salvation of men, after grievous scourging, laid down his life on the cross, be strictly kept according to the rites of the Church, in reading and silence, in prayer and fasting, in compunction and tears."^h

A canon of the council of London particularly enjoins the observance of Good Friday, A.D. 1328.

Another canon of the council of Laodicæa is directed against a practice, growing apparently out of that dramatic identification of themselves, during this season, with the history of the Saviour's sufferings, which we have already noticed as a remarkable feature in the feelings of the earlier Christians; but which in this instance appears to have been carried to an extent disapproved of by the clergy. The practice in question was to break the fast on the evening of the Thursday, in imita-

Breaking the fast on Maunday Thursday forbidden by the council of Laodicæa;

^f The Roman Catholics give the name of Passion Week to that preceding Palm Sunday.

^g See page 296.

^h Can. of Council of London, Spel. Con. ii.

tion of Christ, who, after having washed his disciples' feet, returned to supper; but the canon denounces it "as a dishonouring of the whole of Lent," and enjoins the fast to be continued through this day, and such food only as was suitable for fasting, namely, dry food, to be made use of.ⁱ The practice, however, appears to have continued notwithstanding the canon; for it is again prohibited by the council in Trullo.^k Nor was the rule peculiar to the East. The canon of the council of Laodiceæ against it finds a place in the *Decretum Gratiani*.^l

and by the council in Trullo, A. D. 691.

This canon is in the *Decretum Gratiani*.

Another breach of the fast during this week, committed in the seventh century in Spain, is more difficult to account for. "Some persons," says a canon of the fourth council of Toledo, "on the very day of the Lord's Passion, at the ninth hour, break off their fast, and improperly indulge in feasting;^m and, while the sun himself on that day, veiled in darkness, withdrew his light, and the disturbance of the elements manifested the sorrow of the whole world, they pollute the fast of such a day, and give themselves up to banqueting.ⁿ Since the whole Church, on account of the Passion of the Lord, spends that

Canon of the fourth council of Toledo, A. D. 633, against breaking off the fast on Good Friday.

ⁱ Can. 50; Lab. ii. 572.

^k Can. 29; Lab. xi. 955.

^l De Cons. iii. 8.

^m Conviviis abutuntur.—Can. 8; Lab. x. 620.

ⁿ Epulisque inserviunt.—Ib.

day in grief and abstinence, whoever, except children, old men, and sick persons, shall break his fast before the prayers for forgiveness are finished,^o shall be turned away from the joy of Easter; nor shall they participate, on that day, in the Sacrament of the Body and Blood of the Lord, who do not honour the day of his suffering by abstinence."

The forgiveness to which allusion is here made must not be confused with the absolution of penitents, which, according to a regulation of Pope Innocent the First, embodying the custom of his age,^p was to be pronounced on Good Friday; unless fears for the health of the penitent should lead to an earlier declaration of forgiveness.^q But its nature appears from another canon of the same council of Toledo, blaming the practice which it seems had grown up in some parts of Spain, of closing the doors of the churches on that day, so that "the divine office was not celebrated, nor the Passion of the Lord preached to the people; though our Saviour commanded his apostles, saying, Preach ye my passion, and death, and resurrection to all:" "therefore," continues the canon,

Regulation of Pope Innocent I. A. D. 416, as to absolving penitents on Good Friday.

Another canon of the same council of Toledo commands the performance of service on Good Friday.

^o Ante peractas indulgentiæ preces.—Can. 8; Lab. x. 622.

^p See Bing. xxi. 1, 31.

^q De Cons. iii. 17. The canon proceeds. It is the duty of the priest to judge of the weight of the offences; that he may attend to the confession of the penitent, and the moanings and tears of the contrite, and give them absolution when he sees that the satisfaction is proportioned (to the crime).

"on that day the mystery of the Cross, which the Lord willed to be announced to all, ought to be preached, and all people to pray for the pardon of their sins with a loud voice; that, purified by the compunction of penitence, we may deserve to welcome,^r with our sins forgiven, the venerable day of the Lord's resurrection, and may receive and take the Sacrament of his holy Body and Blood, free from sin."

In connection with this practice of the Church may be appropriately mentioned the laws of the Christian emperors, by which this season was specially selected for the pardon of prisoners; "to imitate," says Chrysostom, "as far as might be, the divine goodness, which, as at this time, freed mankind from the dominion of sin."^s

Edict of the Emperors Valentinian, Valens and Gratian, A. D. 367, pardoning prisoners in the Great Week, with certain exceptions.

The practice began as early as the middle of the fourth century. "For the sake of the day of the Passover," says an edict of the Emperors Valentinian, Valens, and Gratian, "we strike off the chains of all whom guiltiness weighs down,^t whom the prisons confine;" with the exception, however, of those guilty of sacrilege, high treason, robbing graves, poisoning, sorcery, adultery, rape, or murder.

Similar edict of Valentinian the Elder, A. D. 368,

An edict of the Emperor Valentinian the Elder,

^r *Suscipere*.—Eighth Council of Toledo, Can. 7; Lab. x. 622.

^s *Hom. in Gen. xxx.*, vol. i. p. 235.

^t *Quos reatus astringit*.—C. Theo. ix. 38, 3, *Ob diem Paschæ*.

of the year following, in like manner declares :
 “The solemn season of the Passover demands that we absolve those whom the sickening expectation of the torture,^u and the fear of punishment, harasses ; yet the ancient decrees ^{*} must be obeyed ; that we may not rashly suffer the crime of murder, the pollution of adultery, the public injury of treason, the wickedness of the sorcerer, the arts of the poisoner, or the violence of the ravisher, to escape.”^y Similar edicts of indulgence are preserved and in succeeding years.
 for the years 381 and 384, A.D. ; ^z and at length General law to the same effect, A.D. 385, by Valentinian the Younger.
 Valentinian the Younger embodied the annually recurring boon into a general law, that prisoners should be discharged on the first day of the Passover, with the exception of those “whose presence, should they be set free, would rather impair the common joy and gladness. For who would forgive the sacrilegious man on sacred days ? Who, in the season of chastity, ^a would pardon the adulterer, or incestuous person ? Who, in this supreme, quiet, and common joy, would not more vehemently

^u *Ægra expectatio quæstionis.*—C. Theo. ix. 38, 4, *Paschæ solemnitas.*

^z e. g. the Cornelian and Julian law. Gotofred. Com. C. Theod. u. s.

^y *Homicidii crimen, adulterii fœditatem, majestatis injuriam, maleficiorum scelus, insidias venenorum, raptusque violentiam.*—C. Theod. u. s.

^a C. Theod. ix. 38, 6, 7.

^a When marriage was forbidden, see page 216, *supra*.

pursue the ravisher? Let him receive no respite from his chains, who, with an outrageousness of iniquity, has not even permitted the buried to rest. Let the poisoner, the sorcerer, the adulterator of coin, suffer his tortures. Let the murderer always anticipate the death he has inflicted. He also who is guilty of treason ought not to expect forgiveness from the master against whom he has so plotted.”^b

In this shape the regulation became a part of the code of Justinian; its operation being, however, further restricted to such as had not been before convicted of the same offence.^c But though thus adopted into the imperial legislation, we have not been able to discover that the regulation found its way into the codes of any of the states which arose in the West upon the ruins of the empire.^d How-

^b C. Theod. ix. 38, 8.

^c C. i. 4, 3, Nemo deinceps.

Traces of a similar practice in the European kingdoms.

In France.

In Spain, in A.D. 1783.

^d Traces of the practice are, however, to be found in those states at a comparatively late period. Saint Elby, the friend of Dagobert, the king of the south of France in the seventh century, in a homily on Maunday Thursday, says:—“Malefactors are pardoned, and the prison gates thrown open throughout the world.” At a later period the kings of France used to pardon, on Good Friday, some prisoner convicted of a crime otherwise unpardonable; and the clergy of Notre Dame, on Palm Sunday, had the privilege of liberating another from the prison of the Petit Chatelet. And, so recently as the end of the eighteenth century, the viceroy and magistrates in Navarre used to release as many prisoners as they pleased at Christmas, and eight days

ever we have not yet exhausted the laws relating to this season of the year.

The strict observance of Lent was enjoined, as we have already observed, by more than one of the regulations made in the Anglo-Saxon period; but there is a law of Canute relating to this subject, which has been noticed by us, in respect to festivals, and is curiously illustrative of the feelings of that age. "If any one," it says, "by fighting, marrying, plundering, or the commission of any other flagitious crime, shall violate the fast to be kept in Lent, he shall pay a double compensation; and if he wishes to purge his crime, must bring three times the number of purgers."^e The law, indeed, did not originate with Canute; though it is amplified in its provisions under him. One hundred and forty years previous the great Alfred had enacted, "that whoever committed a theft in Lent should make good double the damage." The laws both of Alfred and of Canute applied, as we have already seen, to certain festivals also;^f and that of Alfred moreover to the days of Rogation.^g

Law of Canute
A.D. 1032,
against the
commission of
crimes in
Lent.

Similar law
of Alfred,
A.D. 887;

extending
also to the
Rogation
days.

Besides these laws and those before mentioned, England, until the era of the Reformation, does not

before Easter. In 1783 they released thirteen; the year before they had released all. Digby, *Mor. Cath.* vii. 87.

^e Spel. Con. i. 546. As to purgation, see p. 110.

^f *Ib.* 367, c. 7. See pp. 105, 111.

^g *Diebus lustrationis.*

Pacifying influence of the feelings connected with Lent in the middle ages.

afford us any regulations specially directed to the observance of Lent, or any part of it. But before we consider the laws of the sixteenth century, we will pause for a moment to remark an interesting circumstance connected with our present subject, namely, the pacifying influence exercised, during the middle ages, by the feelings connected with this season; for the whole season of Lent was one when, according to the teaching of the Church, penitence and forgiveness were to go hand in hand. "In the week preceding Lent," says Bishop Theodulphus, in the capitularies to which we have so often referred, "confession of sin should be made, and penance received; they who are at discord should be reconciled; all strife be abated; those who owe one another ought should forgive each other from their hearts, that all entering upon the blessed season of Lent with clean and purified minds, may approach the holy Passover, and renew themselves by penitence, which is a second baptism."^h

Especially the Great Week.

But it was especially in connection with the four last days of the Great Week that this influence was manifested.

Truce of God; originated in Aquitaine.

Its nature.

In the middle of the eleventh century there was established in Aquitaine, whence the custom spread over the rest of Europe, a covenant, that "from the vespers of Wednesday until Monday at day-

^h C. 36; Lab. xiii. 1004.

break, no one shall presume to take aught from any man by violence, or to avenge himself of his adversary, or to come down upon a surety for his engagements." The violation of this covenant, which was known as the "Truce of God," was to be punished, either by payment of such a fine as was considered equal in value to the life of the infringer, or by excommunication and banishment. Many, say the ancient writers who tell us of this Truce, who refused to observe it, were soon punished, either by divine judgments, or by the sword of man; and "this most justly; for as Sunday is considered venerable on account of our Lord's Resurrection, so ought Thursday, Friday, and Saturday, through reverence of his Last Supper and Passion, to be kept free from all wicked actions."¹

How enforced.

The laws of the Reformation respecting the observance of Lent, and the other periods of fasting after-mentioned, as they are for the most part connected with the general question of the duty of fasting, will find their place most conveniently at

¹ See Wiseman's Lectures on the Holy Week, 163 et seq. The Truce acceded to by William the Conqueror; was published by Count Raymond at Barcelona; and enforced, by Urban II. in the synod of Clermont, by Paschal II. in that of Rome, and by Innocent II. and Alexander III. in the first and second Lateran councils. Wiseman, u. s., where will be found also several instances of individual acts of forgiveness, connected with the same season.

the conclusion of this chapter, where we have collected certain other laws relating to the same general question. We proceed, therefore, to examine the canons or laws concerning the other times of fasting prescribed by the Church.

Ember Fasts,
or Fasts of
the Four
Seasons,

observed an-
ciently ;

but no rule
fixing the
time till the
ninth cen-
tury,

though some
regulations
apparently
referring to
them ;

as by the
council of
Gerunda,
A.D. 511,

After the great spring fast, our attention is next claimed by the periods of fasting known as the Fasts of the Four Seasons or the Ember Weeks, in March, June, September, and December. In an earlier part of these pages,^k the observance by the ancient Church of four periods of fasting, corresponding to the four seasons of the year, has been noticed. But it was not until the ninth century that the particular days to be observed were fixed by any generally received rule. Canons may indeed be found of an earlier date, enjoining the observance of certain times as seasons of abstinence, or penitential supplication, apparently with reference to these Fasts of the Four Seasons. But they do not include them all, and do not appear to have obtained more than local authority. Thus the council of Gerunda, in the sixth century, appointed that there should be litanies, accompanied by fasting, upon the Thursday, Friday, and Saturday of the week following Pentecost; and again in the first week of November, unless the first of that month should be a Sunday, in which case the days of fasting and supplication were to be trans-

^k See page 16.

ferred to the next week. On these days there was to be abstinence from wine and flesh.¹

To the ancient custom of observing a winter fast, it is probable that we must attribute a canon of the fifth council of Toledo; when that assembly moved, as its canons tell us, by the prevalence of iniquity, directed that on the 15th of December and the two following days, "throughout the whole kingdom granted to their sovereign by God, this special and peculiar religious observance should be kept for all time, namely, that litanies should be annually offered up, and the pardon of their sins be sought with tears."^m The canon was confirmed by another council held the next year;ⁿ but although fasting would, it is apprehended, have been considered in that age as the fitting accompaniment to the direction contained in these canons, no express injunction for it is to be found among them. Thus partial and imperfect were the earlier regulations concerning the Ember Fasts. But they gradually approach the rule received in later times.

A fast after Pentecost, another before the feast of the Assumption of the Virgin Mary (August 15), and another before Christmas, are enumerated

and the fifth
council of
Toledo, A.D.
636.

Fasts en-
joined by
Nicholas I.
on the Bol-
garians, A.D.
852 to 867.

¹ Con. Gerund. Can. 2. 3; Lab. viii. 550.

^m Con. Tolet. V. Can. 1; Lab. x. 654.

ⁿ Con. Tolet. VI. C. 2; Lab. x. 659.

among the seasons of fasting enjoined by Nicholas the First upon the Bulgarians.^o

A canon of the council of Clovishoff, A.D. 747, fixes the three latter ones in June, September, and December.

In England a canon of the council of Clovishoff, in the eighth century, fixed the three later times in the months of June, September, and December; and ordained, "that none presume to neglect these fasts, but that before the commencement of them, all the people should be warned how far^p the true universal Church knew and observed these fasts; and all should do that with concord; nor should they in any respect^q differ in their observance, but according to the pattern which we have marked out, after the rites of the Roman Church, should study to keep them." But though the season of the fasts is by this canon generally pointed out, still their precise period is not defined. At length a canon of the council of Mayence fixed the times for their observance in France, in the weeks following the 1st of March, the 2nd of June, the 3rd of September, and the 4th of December;^r and these times the Frank emperors ordered to be kept; "and that on the Wednesdays, Fridays, and Saturdays, in those weeks, all should come to church at the ninth hour, chanting litanies, to the solemnities of the mass, and should abstain from

The time more precisely fixed, A.D. 813, by the council of Mayence,

and ordered by the emperors to be observed.

^o C. 4; Labbeo, xv. 403.

^p Quatenus.—Can. 18. Spel. Con. i. 256.

^q Ullatenus.—Ib.

^r Can. 34; Lab. xiv. 73, Con. Moguntiacum.

flesh, while those who despised the fast were to be subjected to ecclesiastical censure.”^s More detailed directions, though not quite in accordance with those of the council of Macon, were given by the council of Seligenstadt, a small town in the neighbourhood of Mayence, in the eleventh century. The spring fast it ordained to be kept on the same week with the 1st of March, if that day fell on or before Wednesday; but if not, then in the following week. The summer fast it fixed for the second week in June, if the 1st of June fell on or before the Wednesday; if after, for the third week; and if the fast should fall on the vigil of Pentecost, it was to be kept “in the solemn week of Pentecost.” The autumn fast, in like manner, was fixed for the second or third weeks of September, according as the 1st of that month fell on or after the Wednesday; and the winter fast is ordered to end on the Saturday next before the vigil of the Nativity of the Lord, that it might never interfere therewith.^t

The council of Seligenstadt, A.D. 1022, fixes times nearly but not quite in accordance with these;

This regulation of the council of Seligenstadt forms part of the digest of canon law published by Gratian.^u Nevertheless, its provisions did not gain universal assent. Thus the eighth canon, attributed to the council of Oxford, two centuries afterwards, notices that many kept the summer

and its canon forms part of the Decretum Gratiani. But the time not fixed in England in A.D. 1222; when a canon as to the time of

^s Cap. v. 151; Lab. xv. 572.

^t Con. Selig. C. 2; Lab. xix. 394.

^u Dis. 76, 3.

keeping this fast is attributed to the council of Oxford.

Attempt to extend the fast by the Bishop of Coventry, A.D. 1237. Henry III.

Rule at the time of the Reformation.

fast, either in the week following Ascension-day or in the week of Pentecost, while it directs the fast to be kept in the second week in June; and fixes for the other three fasts, the first week in March; some time, not more precisely ascertained, in September; and the last entire week before Christmas-day.* Though, as has been already observed, this canon is of questionable authority, its evidence seems sufficient for the purpose for which it is now cited. A few years after the date of the council of Oxford, we find in the constitutions of Alexander, Bishop of Coventry, one which endeavours to extend the period of fasting to the whole time between Ascension-day and Pentecost; and insists at least upon half the week.† But no other regulation upon this subject meets us till the era of the Reformation, when the Wednesdays, Fridays, and Saturdays succeeding,—the first Sunday in Lent, the feast of Pentecost, the 14th of September, and the 13th of December, were ordained to be kept in England as the periods of the Ember Fasts;‡ a rule not far different from that laid down, as has been shown, by the canons of the council of Seligenstadt.

Thus much have we collected in respect to the Ember Fasts. But there remain yet two periods of fasting, the one of more protracted, the other of

* Can. 8; Lab. xxii. 1147.

† Spel. Con. ii. 209.

‡ Rubric before the Common Prayer.

shorter duration ; the first but little attended to by the community at large, the second of very general observance ; but which yet may both claim a place in these pages, since to both did our ancient laws show so much regard, as to suspend judicial proceedings during their continuance. These periods are the Fast before Christmas and Rogation days.

Towards the middle of the sixth century, the council of Tours, in a canon intended for the regulation of monastic life, enjoins a daily fast to be observed during December up to Christmas ;^a but it says nothing as to the laity. The omission is, however, supplied by the first council of Macon some twenty years later, which enjoins all Mondays, Wednesdays, Fridays, and Saturdays, between the feast of St. Martin (the 11th of November), and Christmas, to be kept as fasts, and the "sacrifices to be offered as in Lent."^b The period thus distinguished as a season of abstinence seems, however, to have been usually confined to the interval between Advent and Christmas. Thus we have seen that this is one of the periods during which the council of Enham prohibits law suits and mar-

Canon of the council of Tours, A.D. 567, prescribes a fast before Christmas for monks ;

but the council of Macon, A.D. 580, enjoins it also on the laity, from the 11th of November.

But the time confined in England to the period from Advent,

as is inferred from the

^a 17th Can. Lab. ix. 790. The same canon prescribes for them also a week's fast after Pentecost ; a fast on Mondays, Wednesdays, and Fridays, from thence to November, except in August, when, from the almost daily recurrence of festivals, it directs the fasts to be suspended ; and again one, from the Epiphany to Lent.

^b Con. Matiscon. C. 9 ; Lab. ix. 993.

canon of the council of Raham, and the constitutions of the Bishop of Coventry, A.D. 1257, Henry III;

and an ordinance of the Cardinals Theodosius and Albert, A.D. 1173, Henry II.

riages.^c So the constitutions of Alexander, Bishop of Coventry, at a period subsequent to the Conquest, direct, that "the people be admonished to fast through Advent, at least during half the week, and that confession should precede."^d And an ordinance promulgated by the Cardinals Theodosius and Albert at Abrincas, in the preceding century, which seems to have been received as binding in England, enjoins "fasting during Advent, especially by the clergy and knights."^e These are, however, the last occasions on which mention of the Advent Fast, as a matter of general obligation, occurs, so far as we have discovered, in our English canons. Between the thirteenth century and the era of the Reformation the practice seems to have fallen into disuse; at least the rules of the reformed Church of England, which, in respect to the periods for fasting, appear to have adhered to what was then customary, make no mention of this season of Advent.

Rogation days;

when instituted;

It is otherwise with the second of the two last mentioned times; the Rogation days, or the three days preceding Ascension day. The date and ground of their institution has been mentioned in an earlier part of these pages.^f Their observance

^c See page 36 and 218.

^d Spel. Con. ii. 209.

^e Spel. Con. ii. 102.

^f See page 29.

throughout France was enjoined by the first council of Orleans. "It pleases us," say the bishops there assembled, "that rogations, that is, litanies, should be held by all the churches before the Ascension of the Lord; so that the three days preceding fast be broken in the festivity of the Lord's Ascension, during which three days let all abstain, and use Lent food."^s In England the council of Clovishoff, by a canon, of which part has been already cited,^h ordained, that the same three days "should be venerated by fasting up to nones, and the celebration of the mass, and that with fear and trembling,—the sign of the Passion of Christ, and of our eternal redemption, and the relics of his saints borne before them,—all the people, bending the knee, should humbly supplicate the divine pardon for their offences."ⁱ Their observance is attested in the next centuries by the laws of Alfred, which annex the same increase of penalty to crime upon them, as to crime in Lent;^k and by those of Athelstan, which except from the crimes allowed by them to be compensated, such as were committed on the days of purification,^l called "gangdays."

their observance enjoined by the first council of Orleans, A.D. 511;

and by the council of Clovishoff, A.D. 747.

Law of Alfred as to crime on them, A.D. 888;

and laws of Athelstan, A.D. 928, on the same subject.

In the twelfth century the canon of the council of the council of

^s I. Con. Aurel. Lab. viii. 355; Can. 27.

^h See page 223.

ⁱ Can. 16; Spel. Con. i. 249.

^k See page 325.

^l Lustrationis.—Spel. Con. i. 405, c. 12.

Orleans forms
part of the
Decretum
Gratian;
and their ob-
servance en-
joined at the
Reformation.

Orleans cited above was admitted by Gratian into his digest of the general canon law;^m and that the observance of these days was in full force at the Reformation appears from their admission into the list of fast days ordained to be observed in England.ⁿ

But not that
of the Greater
Litanies;

Not so was it with the day of the Greater Litanies; the 25th of April, instituted, as we have already noticed, by Gregory the First,^o though these too had been marked out for observance in earlier times by generally received canons. Thus in France the council of Mayence, under Charlemagne, ordered the observance of this day "according to the custom of Rome" by a canon enforced by the laws of the

though en-
joined by the
council of
Mayence,
A.D. 813;

and the coun-
cil of Clovis-
hoff;

Frank emperors.^p And in England the canon of the council of Clovishoff last cited^q enjoins that "litanies, that is to say, rogations, be performed by the clergy and all the people with great reverence on the 25th of April, according to the rite of the Roman Church, which also is called the greater litany in that Church." No further regulation respecting this day has come to our knowledge of later date than this canon of the council of Clovishoff; but that the observance was still practised at the

continued to
be observed
to the Refor-
mation;

^m De Con. iii. 3, Rogationes.

ⁿ 2 & 3 Edw. VI. c. 19, Rubric to Common Prayer.

^o See page 27.

^p Con. Mogunt. c. 32; Lab. xiv. 66; Cap. v. 150; Lab. xv. app. 571.

^q See page 335.

Reformation in England, sufficiently appears from an ordinance of Henry the Eighth, which, while it recalls St. Mark's day from the oblivion allotted to it by the already noticed canon and ordinance for the abolition of all but certain feasts, notices that "the day of no saint hath hitherto been used to be fasted but only the said day of St. Mark;" and commands, that from thenceforth throughout the realm "the said day shall not be kept as a fasting day; but that it shall be lawful for all his Grace's subjects to eat flesh or such other meat as to them shall be thought expedient, without scruple or grudge."^r This is the last mention that we find of the fast of the Greater Rogations in England.

but was forbidden to be kept as a fast by Henry VIII., A.D. 1547.

There still remain, of the generally kept annual Vigils; fasts, the vigils or eves introductory to the feast days. We have before seen how these had their origin in the nightly meetings of the early Christians around the tombs of the martyrs. Time, however, and the more flourishing condition of the Church, brought much scandal in the train of these joyful and nocturnal meetings. Even in the beginning of the fourth century the Council of Eliberis prohibited the concourse of women at those times to the cemeteries; "inasmuch as, under the pretext of devotion, they secretly committed wickedness."^s

the keeping of them by women forbidden, A.D. 301, by the council of Eliberis.

^r Wilk. iii. 859.

^s Can. 35; Lab. ii. 12.

So at Milan
by Ambrose ;
and a check
put upon
them by the
council of
Carthage,
A.D. 398 ;

and a canon
of the council
of Laodiceæ,
A.D. 364, di-
rected against
a similar
practice.

Fasts substi-
tuted for the
feasts, circa
A.D. 520.

The council
of Auxerre,
A. D. 573,
fixes their
length.

St. Ambrose seems to have forbidden at Milan these feastings in the churches.^u And, towards the close of the fourth century, the third council of Carthage forbade bishops or other clergymen from partaking in any banquets in the churches, unless on a journey, to procure necessary refreshment; and ordered the people to be restrained from so doing as far as was possible:^x—an ordinance agreeable to the spirit of a canon of the council of Laodiceæ against “eating or placing couches for that purpose in the house of God;” although that canon was more immediately aimed at the Agapæ.^y

In the early part of the sixth century^z the alteration was introduced, of substituting for this nocturnal feast, a fast on the eve before. In this form, yet not before all festivals, the vigils maintained their place and were enforced by ecclesiastical authority. Thus a canon of the council of Auxerre commands the fast on the eve of Passover, Christ-

^u Augustine, *Confessiones*, vi. 2.

^x C. 30 ; Lab. iii. 885.

^y Can. 28 ; Lab. ii. 567.

^z Hamp. ii. 288. He cites Mantuanus, who, in his *Fasti*, l. thus notices the change :

Majores nostri in templis vigilare solebant
Festa recepturi. Hanc morem nova sustulit ætas ;
Nam quia nox sceleri solet esse occasio, et illud
Observant qui furta volunt committere tempus,
Jejunare diem visum est sapientius olim,
Qui præit festum, et noctem dormire cubili.

See also note to page 50.

mas, and the other solemnities, to be continued till the second watch of the night.^a The vigils of "all the greater feasts" are specially enjoined by Nicholas I. on the Bulgarians as times of fasting.^b In England the council of Enham appointed, that the feast of the Virgin Mary, and all those of the Apostles except Philip and James, for the reason assigned in the next page, should be preceded by a fast.^c The same direction is repeated in the laws of Canute;^d and in the eighth canon, attributed to the council of Oxford, there is an enumeration of vigils, less comprehensive however than those before mentioned; for it is confined to the evenings preceding the feasts of the Nativity, the day of Pentecost, St. John the Baptist, St. Peter and St. Paul, St. Lawrence, the Assumption of the Virgin Mary, St. Bartholomew, St. Matthew, St. Simon and St. Jude, All Saints, St. Andrew and St. Thomas.^e At the time of the Reformation, a greater number than these appear to have been kept, for the 5th and 6th of Edward VI.^f enacted, that none shall be observed but those preceding the feasts of the Nativity of our Lord, of Easter, of Ascension day, Whitsunday, the Purification and Annunciation of the Blessed Virgin, All Saints, and all the feasts of

Injunctions
as to keeping
them by the
council of
Enham, A.D.
1009;

in the laws of
Canute, A.D.
1032, and
enumeration
of them, A.D.
1222, by the
council of
Oxford.

The number
reduced A.D.
1532, under
Edward VI.

^a Lab. ix. 913.

^b C. 4; Lab. xv. 403.

^c Can. 15; Spel. Con. i. 518.

^d Ch. 16; Spel. Con. i. 546.

^e Can. 8; Lab. xxii. 1147.

^f C. 3.

the Apostles except St. John the Evangelist, and St. Philip and St. James, which had been of old exempt; the first because it fell immediately after Christmas, the second because it was kept in the joyful season between Easter and Whitsunday.^g The act provides that, if ever the feast fell on a Monday, the Saturday and not the Sunday eve should be kept as the vigil "as had been theretofore accustomably used." In this form vigils remained among fish days, while fish days were enforced, and when these fell into neglect, maintained their post in the great stronghold for fast days in England, the rubric at the beginning of the Prayer Book.

Wakes enjoined by Charles I.,

notwithstanding the canon in the 28th Hen. VIII.

Of wakes,—that peculiar species of vigil of which we have before noticed the origin,^h—we have seen that, by the Book of Sports, as republished by Charles the First, they were commanded to be kept;ⁱ and that without noticing the canon of 1536, which directed them to be observed, so far as they commemorated the dedication of the church, all over England "upon the first Sunday of the month of October and upon none other day."^k The other day so observed, that in honour of the saint to whom the church is dedicated, was by the same canon commanded to be kept no longer, but that

^g Council of Enham, Can. 15. Propter Paschalis gratiam et celebritatem.

^h See page 50.

ⁱ See page 229.

^k Wilk. Con. iii. 824 and 827.

“all persons dwelling within this realm go to their work, occupacyon or mystery upon the said feast as upon any other workye day.”¹

Thus have we passed in review the canons or regulations which come within the plan of our work, and relate to the seasons of fasting of stricter observance and annual recurrence. There remain to be noticed, before we consider, as we propose to do in conclusion, certain general directions concerning the practice of fasting at all seasons appointed for fasts, those canons whereby peculiar days of the week were marked out as times appropriated to this exercise.

They go back to a very early era. The Apostolic Canons, to which we have so often referred, enjoin fasting on Wednesdays and Fridays, on pain of deposition for a clergyman, and exclusion from the Communion for a layman.^m And the reason for selecting these particular days, is declared by Peter, bishop of Alexandria, in his fifteenth canon, to be, as to the Wednesday, because then the Jews took council against Jesus Christ; and as to the Friday, because it was the day of the Crucifixion.ⁿ It can

Fasting on the Wednesday and Friday enjoined by the Apostolic Canons,

and by those of the Bishop of Alexandria, A. D. 303.

The reason for choosing them.

¹ Here might seem to be the place to mention the 30th of January; but that day does not fall within the plan of the present work, there being no other direction than to use a solemn service; though, as will be noticed below, it was customarily kept as a holiday.

^m Can. 68; Lab. i. 30.

ⁿ Lab. i. 1270; Bal. Can. Apost. 902.

Duty of
examining
prisoners on
these days
assigned by
Justinian to
the bishops ;

with a power
of dis-
charging
them, or
having them
speedily tried.

The observ-
ance of these
days enjoined
by a canon
in the Decre-
tum Gratiani.

The Friday's
fast, but not
the Wednes-

scarcely be doubted that it was the sacred character attached to these days, which led Justinian to transfer to them, from the Lord's day,—the day selected by the Emperors Honorius and Theodosius,^o—the duty, by that law impliedly, but by the laws of Justinian expressly imposed upon the bishops, of examining such as were confined in prison, to prevent injustice being done to them. The law of Justinian had, however, a more extensive operation than that of the former emperors. For while the latter related only to the securing proper allowances of food to the prisoner, the former enjoined the bishops to procure the discharge of any slave whom they should find in prison within twenty days, he being first duly punished and sent back to his master, if the master could be found; and to have freemen, confined for any cause but homicide, tried immediately, or if the charge were capital, within thirty days.^p

The observance of these stated days of fasting is enforced by one of the canons admitted by Gratian into his body of the general canon law.^q

Nicholas I., in his precepts to the Bulgarians, retains the Wednesday as a season of "greater

^o See page 281.

^p 9 C. 46, *Neminem oportet*. It seems by 1 C. iv. 22, *Neminem volumus*, that the bishops were to act by setting the judges in motion.

^q De Cons. iii. 16, *Jejunia sane*; a regulation professing to be borrowed from St. Appollonius; as to whom, see page 98.

sorrow," on account of the plot then laid by Judas for the betrayal of Christ, but allows upon it the eating of flesh;—the practice of observing Saturday as a fast at Rome^r—though the Pope did not think fit to enjoin it on the Bulgarians, whom he treats as "not yet able to bear strong meat, or a heavy yoke, but still infants, who must be fed with milk"^s—having, it would seem, gradually superseded the custom of fasting on the Wednesday. The Friday's fast, commemorative alike of the sufferings of the Saviour, and the sorrow of his Apostles, he enjoins them to keep, unless it interfered with certain great festivals. On either day, contrary to the teaching of the Greeks, he allows them the use of the bath; resting upon the precedent of Gregory the First in allowing the use of it upon the Lord's day,^t "which is more to be revered than all other days."^u

day's, enjoined by Nicholas I. A. D. 852 to 867.

But allows the bath on either day.

But the omission of directions as to any but the Friday's fast was not peculiar to the constitutions of Pope Nicholas. The same restriction of the direction to Friday is found among ourselves—in the constitutions of Archbishop Odo;^v—in the canons of the council of Enham;^x—and the laws of Canute,^y with the exception however, in

The Friday's fast alone enjoined by Archbishop Odo, A. D. 943; the council of Enham, A. D. 1066; and Canute, A. D. 1022.

^r As to which, see ante.

^s Cap. 4; Lab. xv. 403.

^t See page 94.

^u C. 5, 6; Lab. xv. 405.

^v Spel. Con. i. 413.

^x Ib. 519.

^y C. 16; Spel. Con. i. 546.

The observance of Saturday, customary at the Reformation, instead of Wednesday.

In Queen Elizabeth's reign, an attempt to make Wednesday also a fish day.

But the Friday alone ultimately retained as a fast day,

though attendance at prayers on both days enjoined by the canons of A. D. 1603.

General laws enjoining fasting.

the last, of that day being a feast day. We have not met with any regulation concerning either of these days in the period intervening between this date and the era of the Reformation. It appears, however, by a law of Edward the Sixth, cited hereafter,^y that the custom prevailed of observing Saturday as a fast day; in obedience, probably, to the canon of the fifth Lateran council, by which, as we have seen,^z its observance as such was made imperative. Nor was the ancient rule revived. For a time indeed an act of Elizabeth^a attempted to add Wednesday to the days ordained by it—for the increase however, not of piety, but of fishermen^b—to be kept as fish days. But the attempt was soon abandoned: and when, in subsequent times, the laws relating to fish days fell into abeyance or expired, the Friday alone was left in the rubric at the beginning of the Prayer Book, as a weekly fast directed to be observed in the Church of England. However, the canons, while directing the regular use of the litany by the clergy both on Wednesdays and Fridays, express it as their “wish, that every householder dwelling within a quarter of a mile of the church, should come, or at least send one of his household, fit to join with the minister in prayers,” on those days.^c

There remains now, of the subjects of inquiry

^y Page 351.

^z See p. 298.

^a 5 Eliz. c. 14.

^b See page 353.

^c Can. 15; Wilk. Con. iv. 392.

which we have proposed to ourselves, one only, namely, those regulations which relate to the observance of periods of fasting generally; and not, as do those with the consideration whereof we have been for some time occupied, to the observance of certain stated periods, as seasons of abstinence.

Our instances of these laws are taken chiefly from the regulations of our Anglo-Saxon ancestors; for among that nation alone have we found many laws of this kind. They are not, however, wholly without precedent. Thus the canon attributed by Gratian to the council of Lyons, fixing the days to be kept holy by an abstinence from labour, concludes by directing that "the appointed fasts, when announced, shall be observed by all.^d And the precept of Pope Nicholas to the Bulgarians tells them, that "in the days of fasting, in which by abstinence and the lament of penitence, we ought chiefly to entreat God, we also must abstain from flesh; for although at all times men should pray, and abstain, yet in the seasons of fasting we should still more give ourselves up to abstinence, so that he who shall be conscious of having done many things forbidden by the sacred decrees, should at these times abstain even from what these allow." While as a warning against even a slight transgression of the rule, the Pope holds up the example

Canon of the
council of
Lyons.

Precept of
Nicholas I.
A. D. 852 to
867.

^d De Cons. iii. 1; Labbeo, viii. 567.

of our first parents; who, "but for tasting the forbidden apple, lost the joys of paradise."^e

Among the
Anglo-
Saxons.

In the coun-
cil of Berk-
hampsted,
A. D. 696;

In the treaty
between
Edward the
Elder, and
Guthurn,
A. D. 905 ;

In the con-
stitutions
of Odo, A. D.
943 ;

In the laws
of Edgar,
A. D. 967 ;

In the
canons of the

But among the Anglo-Saxons and Danes in England, several instances of the kind are to be found. Thus the council of Berkhamsted in the seventh century directed, that "if any one should give his slave flesh, in a time of fasting, the slave should become free."^f Two hundred years later, the treaty made between Edward the Elder, and Guthurn the Dane, contains a stipulation, "that if a freeman shall break an appointed fast by taking food, he shall be subject both to a fine, and the penalty of the violation of the law."^g A few years afterwards, the constitutions of Odo, Archbishop of Canterbury, after enumerating, as we have seen, the seasons of Lent, and the stated weekly fasts, to which they add, though without specifying them more fully, the Four Seasons as periods of fasting, exhort to the "careful and vigilant observance of fasting with alms: for the observance of Lent, the Ember fasts, and the other appointed fasts, are the three wings which bear the saints to heaven."^h The laws of Edgar, of a somewhat later date, enact that the "ordained fasts should be kept as precisely as possible."ⁱ Nor are the canons of the council of

^e C. 4 ; Labbeo, xv. 403.

^f Can. 15 ; Spel. Con. i. 196.

^g Spel. Con. i. 393.

^h Spel. Con. i. 413.

ⁱ C. 5 ; Spel. Con. i. 445.

Enham, in the century following, much less general: council of Enham, A.D. 1009; for after specifying, as we have already noticed, certain particular fasts, they proceed to direct that "the fasts of the Four Seasons, which they call Imbrem, and all the other fasts, as St. Gregory enjoined upon the nation of the Angles, shall be kept."^k

In conformity to this canon, Canute enacted that and in the laws of Canute, A.D. 1032. "all the appointed fasts, whether of the Four Seasons, or of Lent, or whatsoever other, shall be most religiously kept."^l While, on the other hand, he prohibited fasting between Easter and Pentecost, and again from Christmas to the Octave of the Epiphany; excepting, however, the cases of voluntary fasting, or fasts specially imposed by a priest;^m exceptions which, it must be confessed, diminish materially the efficacy of this part of the law.

The observance of the former part was enforced Penalty by these laws for breaking a fast im- properly. by a regulation, that "the Dane of free condition, who shall have broken the appointed fast by taking food, shall pay the penalty of the violation of the law; the Englishman shall be fined according to the nature of the offence." It is a bad thing," continues the lawgiver, "to take any food in a time of fasting before dinner;ⁿ but worse is it to defile

^k Can. 16; Spel. Con. i. 518.

^l Spel. Con. i. 546.

^m Ib.

ⁿ Prandium.—Spel. Con. i. 557.

oneself by the eating of flesh. Let any slave who has done any thing of the sort, according as the act calls for it, be flogged."

Thus thought and legislated our Anglo-Saxon ancestors on the matter of fasting; for the Dane in these regulations did but speak the feelings of those, who yielded to his arms, but by whose religion he was subdued. The Norman period is not productive of any regulations, so far as we are aware, of a similar stamp.

Regulations as to fasting at the Reformation.

It remains, in conclusion, that we notice the laws made in respect to fasting at the Reformation in England, which, from their general character, dealing with all the recognized times of fasting at once, seem to find their place most suitably in this part of our treatise.

Proclamation as to the use of white meats in Lent, A.D. 1542, 34 Hen. VIII.

Four years before the conclusion of his reign, Henry the Eighth struck the first blow at the practice of fasting. "Herrings, lings, salt fish, salmon and stock fish," were, he discovered, peculiarly scant and dear. His Highness, in tender mercy to the pockets of his subjects, bethought him, "how this manner and kind of fasting, to abstain from milk, butter, eggs, cheese, and other white meats, is but a mere positive law of the Church, and used by a custom within this realm;" and "may be dispensed with by the authority of kings and princes, when they shall see the same to tend to the hurt and

damage of the people." Therefore, the King's Highness, "of his special grace and mere motion,"^o granted his subjects free liberty to eat all manner of the aforesaid meats during Lent; requiring them, —on the one hand, "to be in nowise scrupulous or over doubtful thereof;" and—on the other, "not to abuse or turn the same into a fleshly liberty;" but to endeavour, "with the liberty of eating white meats, to observe that fast which God especially requireth of them, that is, to renounce the world and its vanities, according to their vow and profession made at the font stone; for in these points specially consisteth the very true and perfect abstinence of a Christian man." In perfect keeping with these general exhortations is the conclusion of the proclamation, which, commencing with the pretext of meeting a temporary difficulty, ends by declaring that it was "to endure from year to year," till his Highness's pleasure shall be "published to the contrary."^p

If we do not, as may be suspected, trace in this proclamation the influence of Cranmer, it was at least agreeable to his views. No sooner had the death of the royal reformer given to the Archbishop greater freedom of action, than we find him directing an inquiry, "Whether the clergy have declared to their wits and power, and persuaded

Cranmer's
Visitation
Articles, A.D.
1547.

^o The formal words of a papal bull.

^p Wilk. Con. iii. 867.

the people that the manner and kind of fasting in Lent, and other days of the year, is but a mere positive law; and that, therefore, all persons having cause of sickness or other necessity, or being licensed by the King's Majesty, may moderately eat all kinds of meats without grudge or scruple of conscience."⁹

Whether or not the result of this inquiry was satisfactory to the Archbishop, we cannot affirm; but it appears, by a law made two years afterwards, that the progress of the people in the disregard of seasons of fasting was more rapid than the ruling powers approved of.

Act of 2 & 3
Edw. VI. A.D.
1548, as to ab-
stinence from
flesh in Lent,
and other
usual times.

Fears of the decay of the fisheries seem also to have agitated them; and a remedy was sought in the authority of parliament. "Albeit," says the act passed in consequence, "the King's subjects now having a more perfect and clear light of the Gospel, and true word of God, through the infinite mercy and clemency of Almighty God, by the hands of the King's Majesty, and his most noble father, of famous memory, promulgate; and thereby perceiv-
ing that one day, or one kind of meat of itself is not more holy, more pure, or more clean than another; for that all days and meats be of their nature of one equal purity, cleanliness, and holiness; and that all men should by them live to the

That one kind
of meat not
more pure
than another.

⁹ Wilk. Con. iv. 24.

glory of God, and at all times and for all meats give thanks to Him ; of which meats none can defile Christian men, to make them unclean at any time, to whom all meats be lawful and pure ;—Yet, forasmuch as divers of the King's subjects, turning their knowledge therein to satisfy their sensuality, where they should thereby increase in virtue, have of late time more than in times past, broken and contemned such abstinence, which hath been used in this realm upon the Fridays and Saturdays, the Embring days, and other days commonly called Vigils, and in the time commonly called Lent, and other accustomed times ;—the King's Majesty, considering that due and godly abstinence is a mean to virtue and to subdue men's bodies to their soul and spirit ; and considering also, specially, that fishers, and men using the trade of living by fishing in the sea, may thereby the rather be set on work, and that by eating of fish much flesh shall be saved and increased," with the advice of his parliament enacted as follows. After repealing all manner of statutes, laws, and constitutions concerning any manner "of fasting, or abstinence from any kind of meat," the act imposes a penalty of 10s. and ten days' imprisonment, with abstinence from flesh, upon all persons, "of what degree soever," who "willingly and knowingly" shall eat "any manner of flesh, after what manner of sorte or kind it shall be ordered, dressed or used, upon any Friday or Satur-

Why nevertheless abstinence from flesh good.

Penalty on eating meat on certain times, for first offence;

day, or the Embring days," or in any day in Lent, or any other day as "is or at any time hereafter shall be commonly accepted and reported as a fish day, within this realm of England, wherein it hath been commonly used for to eat fish and not flesh."

for subse-
quent
offences.

Every repetition of the offence is to subject the offender to 20s. fine and twenty days' imprisonment, with abstinence from flesh. The execution of this law was entrusted to the justices of the peace, without, however, taking away from the ecclesiastical authorities the power of presenting offenders against the law. One half the penalty was given to the informer.

Exceptions in
certain cases.

Exceptions are, however, made in favour of—persons licensed by the King,—those in "great age or debility, and weakness thereby,"—those "sick or notably hurt, without fraud or covin ;—women with child, or in child bed ;—the King's Majesty's lieutenant-deputies, and captains of any of his Majesty's army, hold or fortress," who are authorized to eat flesh, and empower their soldiers to do so, in times prohibited, upon the want and lack of other kind of victual ;—and such as have aforetime obtained any licence, in due form, from the Archbishop of Canterbury.

Time of pro-
secution un-
der it.

Lastly. The time of prosecution is extended to three months from the date of the offence.^r

The 5th and 6th of the same monarch restricted the operation of the last act by limiting the number of vigils upon which fasting was enjoined to those mentioned above.

Alteration as to the eve, by the 5th and 6th of Edw. VI.

We have already noticed the manner in which the latter of these acts was repealed by Queen Mary's parliament, but revived again by that of James the First. The 2nd and 3rd of Edward the Sixth, however, escaped the storm of the reign of his successor; and that of Elizabeth brought with it additional regulations of the same tendency.

Thus in the fifth year of her reign,* an act "for increase of provisions of fish, and for the more usual and common eating thereof," provided "that the Wednesday of every week but Christmas or Easter week, shall be kept as the Saturdays in every week now are, or ought to be;" and that the eating any flesh on that day, or any day now usually observed as fish days, shall subject the offending party to 3*l.* fine for every offence, or "three months' close imprisonment without bail or mainprize;" and shall draw also upon the person privy to the committal of such offence within his house and not disclosing it, 40*s.* fine. Of these fines the crown was to take one-third, the informer another, and the remaining third was to go to the use of the poor of the parish where the offence was committed.

An act of the 5th of Elizabeth, A.D. 1556, directs Wednesday also to be kept as a fish-day;

affixes increased penalty to eating flesh thereon, or on any fish-day;

or permitting it to be done without disclosing it.

How penalty to be applied.

* C. 5, s. 14—21, 36—40.

Provision for
granting li-
cences on
payment of
certain sums,

Licences however might be procured from the crown for eating certain kinds of flesh, excepting, beef at all times of the year, and veal from Michaelmas till May, on payment of 26s. 8d. to the poor man's box of the parish of their residence—by any lord of parliament, or his wife; 13s. 4d. by a knight or a knight's wife; and 6s. 8d. by any person of inferior degree.

and in cases
of sickness;

Power was also given to the clergyman of the parish where one lay sick, or the parish next adjoining, to grant licences in cases of sickness, which, however, were in no instance to endure more than eight days, without being "registered in the church book, with the knowledge of one of the churchwardens," a process costing 4d. They expired with the sickness. A fine of five marks was imposed upon the offence of granting a licence to such as did not "evidently appear to have need thereof by reason of their sickness;" and the licence itself was

and a fine
upon the
improper
granting of
these last.

But the im-
munities re-
cognized by
the ecclesiastical
law on the sub-
ject were
respected.

The ground
assigned for
these regula-
tions is the
increase of
fishermen.

made void. However, such as "heretofore were or ought to be licensed by reason of age or other impediment or cause, by order of the ecclesiastical laws," were left in possession of their privileges and accustomed licences.

These regulations are all put upon the ground of "the increase of fishermen and mariners, and the repairing of port towns and navigation," and not "for any superstition to be maintained in the choice of meats." And the teaching in any public man-

ner that "any eating of fish, or forbearing of flesh, is of any necessity for the saving of the soul of any man, or that it is of the service of God, otherwise than as other politick laws are and be, is made punishable, as the spreading of false news."

To this substitution of the anxiety for an increase of fishermen in the place of an anxiety for the increase of self-denial, must, we suppose, be assigned a provision of the act, requiring even those who had licences, if not ill or excused by age, to have on fish-days for every dish of flesh, "one usual dish of sea-fish, fresh or salt," to be served at the same table. And to the same cause we must attribute the leave given by it to all persons to have on Wednesdays "one only usual competent dish of flesh of one kind, and no more;" so that they have also "served to the same table, and mease (qu. mise) at the same meal, three full usual competent dishes of sea-fish of sundry kinds, either fresh or salt, without fraud or covin," meet and seasonable; and to be "eaten and spent in like manner as upon Fridays or Saturdays, in like case are used."

Enactments as to having flesh on fish-days and fish, though licensed to eat flesh.

The act was professedly an experiment, limited to twelve years, and was never made permanent, though it appears by a proclamation of Charles the First, noticed subsequently,[†] to have been then looked upon as still in force, excepting so far as the

How far this measure successful, and time for which it was passed.

[†] See page 364

statute next mentioned had altered it. Its result does not appear to have been such as to give the government much encouragement to continue it. Fish-days had stood their ground for fifteen centuries, while they were associated with the religious feelings of men, while they were regarded as times for exercising self-denial; but they made a poor fight, in spite of the aid of fines and imprisonment for their violation, when the line of defence was shifted to the ground of political expediency.

Letter to
Archbishop
Grindall, A.D.
1576, as to
the obser-
vance of the
times of fasts.

However the legislature returned perseveringly to the attack. Attempts were made by the aid of the clergy to quiet the consciences of those who had scruples as to keeping these fasts at all. In the 19th of Elizabeth we find complaints, that the acts for the observance of the Embring and fifty days, (the name of Lent is avoided,) are not so duly looked to as is requisite for the policy and maintenance of mariners and fishermen, and the navy of the realm. And after an explicit declaration, that "her Majesty (God be thanked) is not to be touched or suspected with any superstition" in this matter, Archbishop Grindall is requested to direct the ministers in his province to "teach the people to be willing and obedient, to conform themselves and their families to the laws; and declare to them that the same is not required for the liking of any Popish ceremonies heretofore used, which utterly are to be detested," but only for the politi-

cal reasons before assigned.”^u Yet some mitigation of the laws as to abstinence from flesh seems to have been judged expedient. Some years later another act which, however, was limited in duration to the next parliament,^x altogether repealed the provisions of the last act as to the Wednesday fish dinners. But for the better preservation of the fish-days still left, it prohibited all keepers of taverns or cooks-shops from selling on Christmas-day or any day in Lent, any victuals but such as were allowed to be eaten on fish-days, under a penalty of 5*l.* fine and ten days’ imprisonment; the fine to be divided in the same manner as we have seen provided by the former act of this reign.

The spirit of mitigation prevailed still further, probably as time developed the uncongeniality of the injunctions of these laws, with the feelings now prevalent among the nation; and the 35th of Elizabeth limited the penalty upon the eating of flesh on fish days, to 20*s.* or one month’s imprisonment for the eater; and the penalty on a householder being privy to such an offence committed in his house to 13*s.* 4*d.* Yet certainly it was not the intention of her government at that time that fasting should be allowed to go into disuse: and though concern for the sustentation of fishermen was a mask convenient to assume in the acts of parliament, it

Act of A.D.
1584, repeals
the last act
as to Wednesday;

and imposes
new penalties
on the sale of
flesh by inn-
keepers, &c.

The penalty
lessened,
A. D. 1592.

But the
government
anxious to
encourage
fasting;

^u Letter of the council, Wilk. iv. Con 482.

^x 27 Eliz. c. 11.

may be questioned whether the secret motive of these laws is not more truly manifested in the following manifesto of the Archbishop of Canterbury, of four years' later date.

and the observance of a species of fast on Wednesday and Friday enjoined, A.D. 1596, by Archbishop Whitgift,

with attendance on the public prayers.

The savings to be given in charity.

"Amongst all our sins," it says, "whereby we have provoked God to plague us with this dearth and scarcity, it is to be thought that none have been more forceable thereunto, than our own riot and excess in diet:" wherefore, by her Majesty's strict commands, Archbishop Whitgift directs—that the "public prayers" in all the churches, on all Wednesdays and Fridays, be "diligently frequented;"—and "that such as be of better ability, do in the fear of God, use greater moderation, than heretofore, in their diet, and that, by none of what degree soever, any flesh be dressed or eaten on such days as by law stand prohibited; save where licences be granted for infirmity:—and that, not only on Fridays and other days by law already appointed for fasting days, no suppers at all be provided to be taken by any, either for themselves or household, but also that every one not letted by grievous weakness do abstain from suppers altogether on Wednesday, at "night." The savings by this forbearance, according to ancient practice, are, especially by the wealthier, "to be converted to the relief and comfort of the poor and needy," for whom collections are ordered to be made. But it is rather curious to observe that, in direct opposition to the ancient

rule,^x the fast is specially enjoined in the evening. That the fear of royal disfavour might spur on the lagging impulse of self-denial, monthly certificates are directed to be sent in by the minister and churchwardens of each parish, containing a list of the names of "delinquents in any of the premises;" as well as "of well disposed persons, who have had a dutiful regard to her Majesty's command, and a charitable compassion for the relief of the poor."^y

Lists to be made of those who do, and those who do not obey.

The next year, the authority of parliament was again called into play, to revive and continue the statutes of the 5th and 27th years of this reign, until the end of the next parliament.^z The statute would therefore seem to have expired in the 43rd year of Queen Elizabeth, when we again find a parliament holden: and yet, in the 3rd of James the First, we find an information brought for the transgression of the statute passed in the 27th year of the reign of Elizabeth, against Edward Hull and Edward Reynolds, though we are not told with what result.^a The year before had seen the passing of the last law upon our present subject,^b limited,

Act in A. D. 1597, reviving the 5th and 27th of Elizabeth; which held two years afterwards,

yet seems to have been in force in the 3rd of James I.

Fresh act for the same object in A.D. 1604;

^x See pages 15, 316.

^y Wilk. Con. iv. 351.

^z 39 Eliz. c. 18, ss. 8, 18, 41.

^a Coke, Entries, 371.

^b 1 Jas. I. c. 39. Perhaps this statute may have been considered to revive the former ones by implication.

however, to continue only until the end of the next session of parliament, and professing, like its predecessors, to be made "for the better increase of seamen, to be ready at all times to serve in the king's majesty's navy, and the navy of England, whereof "the fishermen of England have ever been the chiefest seminary and nursery ; which in this latter age hath greatly decayed." Though destined to have so short a life, for it does not appear to have been ever continued, the language of the act shows no sign of the feebleness of decay. It

professes to be made for the increase of seamen ;

revokes all licences granted under the 5th Elizabeth to sick persons ; prohibits the killing of certain kinds of meat in Lent,

under penalty of the loss of the meat ;

and increases the penalty on the dressing meat at inns, &c. ;

yet lasted only one year.

revokes all licences granted under the 5th Elizabeth, for eating beef, veal, mutton or bacon on fish days, to sick or infirm persons ; it prohibits butchers from killing in the time of Lent, unless in the three days next before Easter day, "oxen, beeves, brevets, hogs, rams, calves, ewes or wethers," except for the purpose of victualling ships going to foreign parts. It empowers all justices of the peace, mayors, bailiffs, and constables, to seize any meat of these forbidden sorts during Lent, and distribute it to prisoners and other poor folk at their discretion. And it imposes upon the keepers of places of public entertainment, guilty of dressing any prohibited food at the forbidden times, the penalty of the loss of the article, besides that imposed by the 5th of Elizabeth before mentioned. Yet with all this blustering, it lasted in force only one year, i. e., till the parliament held in the 3rd of King James.

The struggle of the government for the observance of fish days, against the desire of its subjects to eat flesh at all times, was however carried on some years longer by means of proclamations; which at that time, for some purposes, appear to have been regarded as almost equivalent to acts of parliament.

Thus in the sixteenth year of his reign, we find James the First complaining of "the disorders committed, chiefly in the city of London and the confining parts, in the killing and eating of flesh; and the negligence or rather contempt shown in the execution of such directions as had been in former years published, for a rule of order and moderation and a due observance of so necessary a constitution." Nay, so far were men "declined from the abstinence and moderation of former times, as instead of fasting, and forbearing suppers on Fridays, both in Lent and other times," there was nothing "more usual than to make special choice of Friday nights for suppers and entertainments, to the great offence and scandal of the government." Orders therefore are given suited to such an emergency; all licences "granted by the mayors and justices of the peace to kill and utter flesh contrary to law" are withdrawn. The magistrates are enjoined to examine eating-house keepers on oath, as to the flesh killed or eaten in their houses during Lent; and to commit them to

Proclamation,
A.D. 1620,
against the
use of flesh
in Lent, &c.

prison if they refuse to answer. These latter are to be required also to enter in bonds, in 100*l.* for themselves, and 30*l.* a-piece for two sureties, that they will not allow flesh to be dressed and eaten in Lent in their houses. Persons are to be set at the gates of the city and elsewhere, to hinder flesh being carried in during Lent, and to search for and intercept the same; and if guilty of negligence or corruption, are themselves to be imprisoned while Lent lasts. While the allowing meat to be dressed or eaten in their houses on Fridays, is to subject eating-house keepers "to such punishment as is due to those who condemn the king's royal pleasure and commandment." The same directions are extended to all the kingdom; and the neglect of those in authority to enforce them, is to subject the offender to "answer the same at their utmost peril."^c

New proclamation in the
19th Jas. I.,
A.D. 1622;

But although "all people" were required to notice this proclamation "without further declaration of the royal pleasure," the memories of his majesty's subjects needed at that time to be frequently jogged, to prevent their relapsing into forgetfulness upon the point of fasting. Three years had not elapsed, before we find the king again lamenting, that "notwithstanding the many good provisions heretofore made in that behalf, the inordinate liberty now

^c Rymer, Fœd. xvii. 131.

usually taken by all sorts of people, to kill, dress and eat flesh in Lent season, and on other days and times prohibited by law, is become an evil of such inveterate growth, as it requireth more than ordinary care to repress the same." This care the king displayed by republishing his former proclamation, accompanied by a prohibition to "all persons, of what degree soever, to eat any manner of flesh in the time of Lent, or on other days now usually observed as fish days, without a special licence from the bishop, to be sparingly granted." Disobedience is to involve the danger of a prosecution by the attorney-general, before the Star Chamber, for "contempt of the royal commandment," as also "such further penalty as, by the laws and statutes of our realm, may be inflicted on such as wilfully offend on this head." Victuallers also in the country, as well as those in London and Westminster, are to be required to enter into securities, but limited to 10*l.* for themselves, and 5*l.* for their sureties, not to transgress the direction; and the liability to heavier securities or loss of their licences, and to imprisonment, is annexed to their refusal. On the other hand, to guard against the danger of fish becoming over dear, the mayors and justices of the peace are directed to provide, that the fishmongers do not take advantage of these orders to enhance the price of fish.^d In this form the proclamation

republishing
the former
with additional
provisions ;

republished
A.D. 1623,

^d Rymer, Fœd. xvii. 349.

and A.D. 1625, was republished in the 20th and 22nd of James I.;^e
 A.D. 1626,
 A.D. 1627, and the 1st, 2nd, 3rd and 5th years of Charles I.^f
 A.D. 1628,
 A.D. 1630. The 6th of that monarch brought a change in its
 form.

New procla-
 mation, A.D.
 1632.

The new proclamation recites the 2nd and 3rd, and 5th and 6th of Edward VI., the 5th, 27th and 35th of Elizabeth, and then "straightly commands that due execution be had of these laws, and enquiry made as to offenders;" but without saying anything as to the giving securities not to kill or sell meat, &c., or the other measures of precaution so often, and probably so ineffectually, enforced by its predecessors.^g The omission, we conceive, was wise; for vain is the attempt, by acts or proclamations, to alter the current of public feeling. Penalties may be multiplied, but penalties are not convictions; a law aimed at a popular custom may tease an offender now and then; but in a country as free as England then was, if the edict of the government does not embody the feelings of the governed, connivance at its breach soon consigns it to oblivion.

The proclamation of 1632 was the last, so far as our researches have extended, issued on the subject. With it therefore our labours in collecting laws upon the matter of this chapter come to a

^e Rymer, Fœd. xvii. 447, 661.

^f Ibid. xviii. 268, 822, 961, xix. 116.

^g Ibid. xix. 329.

close. Yet before we dismiss the proclamations of James and Charles wholly from our notice, we would remark that, notwithstanding the more disciplinarian character apparent in parts of them, the political grounds taken by the acts of parliament before cited, viz. the sparing and increase of victuals, the maintenance of the navy and the encouragement of fishermen, are prominently put forward in each of them as the motive to their publication; thus making them present a somewhat incongruous mixture of morals and expediency.

Grounds on
which these
proclama-
tions profess
to proceed.

As a conclusion to this and the preceding chapter, we annex a short statement of the principal points decided in the reported cases upon the laws contained in them. More than this, since the laws may be now considered as obsolete, where they are not expired or repealed, it seems useless to give. Laws are of value, even when operative no more, as the exponents of the feelings which prevailed among the governing class of the society wherein they were made. But cases are, we conceive, in general of little importance, except as expounding the laws under which men happen to live.

Of the cases upon these laws, *R. v. Vachel*, 1 17 Eliz. Anderson, 138; *Eliz. Dormer's case*, 2 Leon. 5; 32 Eliz. Sheldon's case, 1 Leon. 241; and *Ann Mannock's* 33 Eliz. case, Godbolt, 148; *Levinz's Entries*, 11, 12, turn 3 James I.

- 15 James I. upon the form of the indictment; and *R. v. Webb*, Bridgman, 120, Cro. Jac. 480, upon that of the proclamation, under which a person accused of not conforming to the requirements to go to church, was to be, or might be, proceeded against.
- 12 James I. *Dr. Foster's case*, 11 Coke, 56, and 1 Rolle, Rep. 89, embraces a variety of points connected with the mode of proceeding under the acts, for the same offence.
- 15 James I. *R. v. Lovell*, Hob. 205, settles that an information could be brought under these statutes in the Common Pleas.
- 11 James I. *R. v. Foster*, 2 Bulst. 324, is upon the course to be taken where a party proceeded against conformed after judgment.
- 7 James I. A dictum in *Lane*, 60, 61, lays down that on a conviction of recusancy by indictment, the informer got no advantage.
- 13 James I. *R. v. Law*, 3 Bulst. 87, settles that the husband was liable for the recusancy of his wife.
- 8 James I. *Halsey's case*, *Lane*, 106, affirms the right of the Crown to seize the lands of a recusant after his death: and—
- 14 James I. *The Chancellor of Cambridge v. Walgram*, Hob. 127, the right of the king to present to an advowson appertaining to a manor, two-thirds of which he had seized for recusancy: while
- 11 James I. In *Godbolt*, 216, pl. 309, a strong opinion is expressed that a lease of the patronage would be void.

Lastly, the cases of *Anon.* 1 Bulst. 159; *Win-* 9 Jas. I.
ston v. Brown, 2 Rolle, Rep. 438, 455; *Anon. Skin-* 21 Jas. I.
ner, 101; *R. v. Barnes*, 3 Mod. 42; and *Britton v.* 35 & 36
Standish, 6 Mod. 188, and 1 Salk. 166, are of more Chas. II.
 3 Anne,
 importance, as they relate to the question of the as to power of
 power of the ecclesiastical courts to compel any the ecclesias-
 person to attend his parish church; a power which, tical courts to
 if they ever possessed, they would, we apprehend, compel atten-
 possess still.^h These cases, however, appear to dance at the
 settle that the ecclesiastical courts have not this parish
 power, because they have no right to decide the churches.
 bounds of parishes.

^h See pages 288, 307.

CHAPTER X.

PRACTICE OF THE COURTS, ETC., AS TO THE OBSERVANCE OF HOLIDAYS.

Object of Chapter—Holidays at the Law and Public Office—Recent Alterations as to these—Sittings of the Courts of Chancery—the Bankrupt Court—the Commissioners—the Insolvent Court—the Privy Council—the Ecclesiastical Courts—the Admiralty Court—Vacations at Common Law—formerly—at present—Cases as to the Long Vacation—the Days kept at Easter—at Christmas—as to Sundays and other Holidays—where the last day—where intermediate—Court of Chancery—present Vacations—Cases as to the mode of computing the Vacation—as to reckoning it—as to reckoning a Sunday or other Holiday—where the last day—where intermediate.

Design of this chapter.

WE have now concluded that view of the laws, made from time to time, relating to the observance of feasts and fasts, which it has been the object of the present essay to bring together. But it has appeared to us, that some notice of the days now or recently kept as holidays by the offices of the courts of law, and the other principal public establishments, would both form a useful addition to this essay, and afford an illustration of the degree in which the seasons formerly kept holy have continued to exercise an influence upon our modern world. We propose, therefore, to give some ac-

count of the times at present observed, or which were so kept until within a recent period, omitting Sundays as of universal observance; and throwing the statement, for the convenience of comparison, into a tabular form. We propose to add some account of the times of sitting and of vacation, observed by the different courts; and, in conclusion, to notice certain rules and decisions of the courts of law and equity relating to the computation of the vacations and holidays kept by them in the times allowed for preparing pleadings, or the notices required to be given of legal proceedings; matters, which might indeed have been appropriately introduced in an earlier part of these pages, yet seem, on the whole, more conveniently treated of in connexion with the account of the holidays observed in the different offices. ^a

^a The holidays kept in the Common Law offices are taken from Tidd's Practice, ed. 1828. However, none of them enumerated were observed in term time but the Purification, Ascension day, and St. John the Baptist. All the Ecclesiastical offices, until about 20 years ago, kept, as far as the writer can ascertain, the same holidays as were kept at Common Law.

The holidays kept by the Chancery offices are taken from the Report of the Commissioners on the duties, salaries, and emoluments of the courts of justice, H. C. R. April 9, 1816; and a paper on holidays, presented to the M. R. May 5, 1842, by the Law Society.

*Comparative View of the Days now, or up to
a recent period, kept as Holidays by the Offices
of the Law Courts, and at the Public Offices.*

ABBREVIATIONS EMPLOYED IN THIS TABLE.

Common Law Offices (prior to 1833)—C. L.

Chancery Offices—A. G., Accountant General; A. O., Affidavit Office; E. O., Enrolment Office; Ex., Examiners;^a M. O., Masters' Offices; P. O., Public Office; R. O., Record Office at the Tower; R. R., Register and Report Offices; S. O., Subpoena Office; S. R., Secretaries to the Rolls; W. R., Office of Writs and Records.^c

Public Offices—Bk., Bank, East India Stock, and South Sea House; Cu., Customs; Exc., Excise^e and Exchequer.^e

MOVEABLE FASTS AND FESTIVALS.

| DAYS. | OFFICES. |
|--|---|
| Shrove Tuesday | C. L.; ^f E. O.; Bk.; Cu. |
| Ash Wednesday | C. L.; ^f all but M. O. and P. O. |
| Maundy Thursday ^g | A. G.; R. R.; ^h S. R. |
| Good Friday | All. |

^a Order of 22 April, 1841, H. of C. Report.

^b There are four of these officers—a chief secretary, an under-secretary, a secretary of causes, and one of decrees, but all keep the same holidays. See H. of C. Report.

^c Which replaces the old Six Clerks' Office.

^d Up to 1835, see Stationers' Almanack.

^e From the Stationers' Almanack for 1786. After this date St. George's day is omitted from the list of holidays observed; and the custom of printing that day, Lammas day, and some other old festivals with a red letter, is discontinued. But the same holidays seem to have been kept, with the omission of St. George's day, down to the times when, as is mentioned below, their observance was abolished.

^f As a half holiday.

^g The time from Maundy Thursday to Easter Saturday fell, in the masters' offices, into the vacation, before the alteration in the times of the terms. See vacations, *infra*.

^h Ho. of C. Report.

THE OBSERVANCE OF HOLIDAYS.

371

| DAYS. | OFFICES. |
|-----------------------------------|---|
| Easter Eve | A. G. ; P. O. ; R. R. |
| Easter Monday | All. |
| Easter Tuesday | All. |
| Easter Wednesday | All the Chancery Offices ; Cu. |
| Easter Thursday | } A. G. ; E. O. ; Ex. ; R. R. ; S. R. ; W. R. |
| Easter Friday | |
| Easter Saturday | |
| Ascension day | } C. L. ; all the Chancery Offices but A. O. and S. O. ; Bk. |
| Whit Monday ¹ | |
| Whit Tuesday ¹ | All. |
| Whit Wednesday ¹ | All the Chancery Offices ; Bk. |
| Whit Thursday ¹ | } A. G. ; E. O. ; Ex. ; R. R. ; W. R. |
| Whit Friday ¹ | |
| Whit Saturday ¹ | |

FIXED FESTIVALS.

JANUARY

| | |
|-----------------------------------|--|
| 1 Circumcision ¹ | } C. L. ; all the Chancery Offices but A. O. & P. O. ; Bk. & Exc. |
| 2 ——— ¹ | |
| 3 ——— ¹ | } All the Chancery Offices but A. O. ; P. O. ; S. O. |
| 4 ——— ^{1, k} | |
| 5 ——— ^{1, k} | |
| 6 Epiphany | All but S. O. |
| 8 St. Lucian ¹ | } S. O. |
| 18 Epiphany, old style | |
| 25 Conversion of St. Paul .. | S. O. ; Bk. |
| 30 King Charles, martyr.... | All. |

FEBRUARY

| | |
|------------------------------|------|
| 2 Purification, or Candlemas | All. |
|------------------------------|------|

¹ These days usually fell in the time of vacation at the masters' offices before the alteration of the terms. See *infra*.

^k These days are not mentioned in the H. of C. Report, as kept by E. O.

¹ More than one saint is commemorated upon this day. The one who is mentioned in the Roman Breviary is a priest, who is said to have suffered under Claudius Cæsar, in the Flaminian Way, at Rome. Martyr. Rom.

PRACTICE OF THE COURTS, ETC., AS TO

| DAYS. | OFFICES. |
|---|--|
| 14 St. Valentine (see Add.) | Bk.; Exc. |
| 25 St. Matthias | C. L.; Ex.; ¹ Bk.; Exc. |
| MARCH | |
| 25 Annunciation, or Lady-day | All (S. R. omitted in H. of C. Report). |
| APRIL | |
| 23 St. George | S. O.; Bk.; Cu.; Exc. |
| 25 St. Mark | C. L.; Bk. |
| MAY | |
| 1 St. Philip and St. James | C. L.; Bk. |
| 8 St. Michael | Bk. |
| 19 St. Dunstan ¹ | S. R. |
| 26 St. Augustine ¹ | P. O.; Ex. |
| 29 Restoration of Charles II. | All but S. R. |
| JUNE | |
| 11 St. Barnabas | Bk.; Cu.; Exc. |
| 24 St. John the Baptist, or Midsummer day | All. |
| 29 St. Peter | C. L.; Bk.; Cu.; Exc. |
| JULY | |
| 15 St. Swithin | Bk.; Exc. |
| 26 St. James | C. L.; E. O.; ^m S. O.; Bk.; Cu.; Exc. |
| AUGUST | |
| 1 Lammas day; ⁿ St. Peter ad Vincula | Bk.; Cu.; Exc. |
| 12 Old Lammas day, and the octave of St. Oswald .. | S. R. |
| 16 St. Arnulph ^o | S. O.; S. R. |

¹ List given by Law Society.^m Ho. of C. Report.

ⁿ The name Lammas is derived, according to one account, from a custom by which the tenants of the cathedral church at York, which is dedicated to St. Peter ad Vincula, were bound to offer a lamb at mass on that day, Jac. Law Dict.; but, perhaps, with more probability, from hlaf masse, or the loaf mass; new bread being then offered as a thanksgiving for the harvest. Hamp. ii. 234.

^o Cal. Exon. See Hamp. M. C. i. He is said by Baronius to have been a bishop of Soissons, who died A.D. 1087. Martyr.

| DAYS. | OFFICES. |
|---|---|
| 21 ^p | S. O.; S. R. |
| 24 St. Bartholomew | C. L.; S. R.; W. R.; Bk. |
| SEPTEMBER | |
| 2 London burnt..... | W. R.; Bk.; Cu.; Exc. |
| 9 Nativity of Virgin..... | S. R. (List of Law Society). |
| 14 Holy Cross Exaltation .. | S. R.; Bk.; Exc. |
| 18 ^a | Bk.; Cu. |
| 21 St. Matthew | { C. L.; P. O.; S. R.; Bk.; Cu.; Exc. |
| 22 St. Maurice and his com- panions ^r | |
| | S. R. |
| 29 St. Michael and all Holy Angels ^s | { C. L.; Ex.; P. O.; R. O.; S. O.; S. R.; W. R.; Bk.; Cu.; Exc. |
| | |
| OCTOBER | |
| 18 St. Luke..... | C. L.; S. R.; Bk.; Cu.; Exc. |
| 25 St. Crispin ^t | S. R. |
| 28 St. Simon and St. Jude.. | C. L.; S. R. |

Rom. under Aug. 15. We may remark, however, that the festival of the Name of Jesus, which is noted as a great festival in the Salisbury Breviary, would, before the alteration of the calendar, have fallen on this day. It was kept Aug. 5, which was also St. Oswald's day.

^p No feast is noted as kept on this day either in the Exeter or Salisbury calendars. But before the alteration of the calendar it would have been St. Lawrence's day.

^a The Salisbury Breviary has this note on this day:—Keep always the fast of the 9th month.

^r Of the Theban legion, who are said to have been cut to pieces by the rest of the army, by order of the Emperor Maximian, in La Valais, at the spot where the present town of St. Maurice is situated, because they would not offer sacrifice.—Breviarium Rom.; Martyrol. Rom.

^s Fell in the vacation kept by A. G.; M. O.; R. R. See *infra*.

^t St. Crispinus and St. Crispianus are said to have been Romans of noble family, put to death in the persecution under Diocletian, at Soissons, in Gaul. Their bodies were afterwards translated to Rome, and buried in St. Lawrence's church.—Martyr. Rom.

PRACTICE OF THE COURTS, ETC., AS TO

| DAYS. | OFFICES. |
|---------------------------------------|--|
| NOVEMBER | |
| 1 All Saints ^a | C. L.; Bk.; Cu.; Exc. |
| 2 All Souls..... | C. L. (as a half holiday); Bk. |
| 4 King William landed.... | { C. L. (as a half holiday); S. O.; Bk. |
| 5 Powder Plot | All but S. R. |
| 9 Lord Mayor's day ^x | { E. O.; ^y W. R.; R. R.; Bk.; Cu.; Exc. |
| 18 ——— | Bk. |
| 30 St. Andrew..... | C. L.; Bk.; Cu.; Exc. |
| DECEMBER | |
| 21 St. Thomas..... | C. L.; S. O.; Bk.; Cu.; Exc. |
| 24 ^z | A. G.; S. R. |
| 25 Christmas ^a | { All. |
| 26 St. Stephen ^a | |
| 27 St. John ^a | |
| 28 Holy Innocents ^a | All. |
| 29 ——— ^a | { All the Chancery offices but P. O.; R. O.; ^b S. O. |
| 30 ——— ^a | { A. G.; E. O.; Ex.; R. R.; |
| 31 St. Sylvester ^a | { W. R.; S. R. |

◆

DAYS KEPT IN HONOUR OF THE SOVEREIGN
AND ROYAL FAMILY.

| | |
|------------------------------|---|
| King's(or) Queen's birth-day | All but M. O. and S. R. |
| ——— Accession | { C. L.; ^c A. O.; E. O.; Ex.; P. O.; R. R.; S. O.; W. R.; |
| ——— Proclamation | { Bk.; Cu.; Exc. |
| ——— Coronation | C. L.; Bk.; Cu.; Exc. |
| Birth-day of Queen Consort | All but A. G.; M. O.; and S. R. |
| Birth-day of Prince of Wales | { C. L.; A. G.; E. O.; ^d R. R.; |
| | { W. R.; Bk.; Cu.; Exc. |

^a Usually falls in the vacation kept by A. G.; M. O.; R. R.

^x Not at the common law offices. 5 Taunton, 180.

^y As a half holiday. Ho. of C. Report.

^z Falls in the vacation kept by M. O.

^a These days fall within the vacation kept by M. O.

^b The Ho. of C. Rep. mentions this day as kept at the R. O.

^c Not in the Exchequer. 9 Price, 13. ^d Ho. of C. Report.

Besides these days, there are or may be observed as periods of vacation by the under-mentioned offices, these times :—by the Masters at Common Law, the period between the last of August and the 21st of October;^f—in the Court of Chancery, by the Masters, the intervals between the last seal after, and the first before each term;^g by the Accountant-General and Register of Reports, the period between the end of August and the first seal before Michaelmas term; by the Public Office, the Saturdays between the Circumcision and the first seal before Hilary term; and those between the close of the sittings of the courts and the first seal before Michaelmas term;^h at the Examiner's office, the Mondays, Fridays, and Saturdays, between the last seal after Trinity term and the first seal before Michaelmas term; and by the Secretaries to the Rolls every Saturday between the last period and the petition day following the first.

Vacations
kept :

by the Masters
at Common
Law ;

in Chancery,
at the Mas-
ters' offices ;

at the offices
of the Ac-
countant-Ge-
neral and
Register of
Reports ;

at the Public
Office ;

at the Exa-
miner's office ;

at the office
of the Secre-
taries for the
Rolls.

But although this numerous list of holidays was kept until a recent period at so many public offices, and still continues to be observed, though not always with great regularity,ⁱ at a considerable number, there are several where the number has long

^f Archbold's Practice of the Q. B., 12, 7th ed.

^g See note at the end of the chapter.

^h Ho. of C. Report, and Law Society's list of holidays.

ⁱ E. G. We have mentioned below the varieties of practice in the offices of the Masters in Chancery. In the other Chancery offices, if any of the courts sit, days which otherwise would be

Very few
holidays ob-
served by

been very small ; while in others recent regulation has cut off all but a very few.

the Petty Bag
office ;

Under the First Head we may class the Petty Bag office, which kept only Good Friday, Easter, and Whitsun weeks,^h and Christmas and the four days following—the Keeper of the Records at the

the Record
office at the
Tower ;

Tower, who observed the same periods, omitting, however, the 29th of December, the abrogated festival of St. Thomas of Canterbury ; and adding

the Secretary
of Lunatics ;

the 30th and 31st of the month ;ⁱ—the Secretary of Lunatics, who contented himself with Good

holidays are not kept by those offices more immediately connected with the court business. And when Easter day or Whitsunday fall in term, as is often the case since the alteration mentioned in p. 76, another week is kept, by a special order of the Lord Chancellor, instead of the Easter or Whitsun holidays.

^h The Ho. of C. Report omits the three last days in Easter and Whitsun weeks.

St. Sylvester,
fl. A.D. 320.

ⁱ The 31st is Saint Sylvester's day, which, as we have seen in page 77, was one of the days whose observance as a legal holiday was enjoined by Gregory IX. Saint Sylvester was a pope, who is said to have converted the Emperor Constantine ; having previously healed him of a leprosy, for the cure of which the Emperor was about to employ a bath made of infants' blood, when he was deterred by a vision of St. Peter and St. Paul, who sent him to the Pope. To St. Sylvester are attributed also many regulations of ecclesiastical ceremonial. He is said to have introduced the custom of calling all the days of the week, except the Sabbath and the Lord's day, which retained their own names, *feriæ*, *i. e.* holidays ; " that he might teach the clergy, casting away the care of other things, to keep holiday only to God."—*Breviarium Rom.*

Friday, two days at Easter, Christmas, and the three following days—the Clerk of the Dispen-
 sations and Entries, who added to this number Whit
 Monday and Tuesday, but dropped the feast of
 the Innocents;^k—and the Chancellor's Secretary,
 who omitted all but Good Friday and Christmas
 day.

the Clerk of
 Dispen-
 sations
 and Entries;

and the Chan-
 cellor's Secre-
 tary.

The Second Class,—or those offices where the holidays have been reduced in modern times by regulations of the legislature or the courts, includes a larger list; in fact, all but the Chancery offices. Thus the Bankrupt office, by an order of thirty years' standing,^l keeps only Good Friday and Christmas day. The Common Law Courts, by the joint operation of the 3rd & 4th Will. IV., c. 42, s. 43, and the 8th rule of Hilary Term, 6 Will. IV., observe only Good Friday, Easter eve, and "such of the five days following as may not fall in the time of term;" Whit Monday and Tuesday; Christmas, and the three following days; the Birthday and Accession of the Sovereign; and the Birthday of the Queen Consort. While at the offices of the Ecclesiastical Courts, by a regulation of about twenty years' date, Good Friday, Whit Monday and Tuesday, the 29th of May, Christmas day, and the Birthdays of the Sovereign and Prince of Wales, are considered as the only holidays.^m

Holidays cur-
 tailed at the
 Bankrupt
 office by an
 order of 11th
 April, 1815;
 at the Com-
 mon Law
 offices by 3 &
 4 Will. IV.,
 and a rule of
 Hil. Term,
 A.D. 1836;

at the Ecclesi-
 astical Courts,
 about A.D.
 1825;

^k The Ho. of C. Report.

^l 2 Rose, 477.

^m The same days are kept at the Stamp office, with the ad- Holidays

The forty-ninth of George the Third ^a abolished all holidays at the Excise offices, except Christmas day, Good Friday, the 29th of May, the Anniversaries of the Birth and Coronation of the Sovereign; and any day appointed for a public fast or thanksgiving; which, indeed, it is apprehended, would be generally observed in all the public offices.

at the Excise
offices, A.D.
1809;

A statute of William the Fourth ^o extended a similar regulation to the Customs and Dock offices, dropping, however, the 29th of May; while another act ^p assimilated the holidays at the Exchequer to those at the Treasury, which, it would appear, are only Good Friday and Christmas day.

at the Cus-
toms, A.D.
1833;

at the Ex-
chequer,
A.D. 1835;

at the Bank,
the India and
South Sea
Houses, since
A.D. 1835;

Lastly, since 1835, the Bank, the India House, and the South Sea House, have confined themselves to keeping Good Friday and Christmas day, as general holidays, ^q and the 1st of May and of November in addition, at the Transfer offices. ^r

dition of Whitsunday eve. But we have not discovered when the custom was introduced; however, the office is a modern one.

kept at the
Stamp office.

^a C. 66; repeated in 7 & 8 Geo. IV. c. 55, s. 16.

^o 3 & 4 Will. IV. c. 51.

^p 4 & 5 Will. IV. c. 15, s. 6.

^q There are other days, when the public are not admitted without paying a small fee. But these are not holidays for the clerks, though sometimes mentioned as such in almanacks.

Holidays at
the British
Museum.

^r These also are the holidays kept at the Library of the British Museum; with the addition of the first week of January, May, and November.

Thus much upon the holidays observed at the law and public offices. We proceed, as we have intimated, to make a few remarks upon the sittings and vacations of the courts.

Of the times of sittings of the Courts of Common Law, we have little to add to what has been mentioned in these pages.^s Those of the Court of Chancery follow in term the steps of the Common Law Courts in time, as in place, being then held at Westminster. They come, therefore, in respect to the Easter and Whitsun holidays, under the operation of the act of William IV., which, as we have before seen,^t regulates the duration of the terms at common law. But, besides these times, the Courts of Chancery sit at Lincoln's Inn in the vacation, during so many days as may be necessary to keep under the arrears of business. This is generally reconcileable with a vacation from the 22nd or 23rd of December to the 11th of January; another vacation of about a fortnight at Easter, before Easter term; and another of about ten days

The Courts of Chancery sit in term at Westminster;

sit also in vacation at Lincoln's Inn.

Vacations kept by them at Christmas;

at Easter;

^s We may, however, observe, that in the early part of this century a practice grew up of the judges holding sittings out of term, to hear arguments upon such matters as were properly disposed of in term. The practice is recognized and regulated by the 1 Geo. IV. c. 16, and the 3 Geo. IV. c. 102. And now the 1 & 2 Vict. c. 32, enables these courts to hold sittings in Banc in the time of vacation, for the purpose of disposing of arrears of business.

Sittings of the Courts of Common Law in vacation allowed.

^t Page 76, et seq.

at Whitsuntide; in the summer. at Whitsuntide, or between Easter and Trinity terms; as well as with a long vacation from the commencement of August to the 2nd of November.

Intervals between the sittings in term and those in vacation. There are also, usually, intervals of a few days between the sittings of the courts in term and those in vacation.

Sittings of the Court of Bankruptcy. The Court of Bankruptcy, in its times of sittings, follows pretty nearly the footsteps of the Court of Chancery, out of which it arose, and into which, indeed, it may be considered as again absorbed; the Chief and only acting Judge being one of the Vice-Chancellors. However, no special times

Of the Bankrupt Commissioners. of vacation are observed by the Commissioners; but their sittings are held according as they may be needed by the state of business, throughout the year, on any day except Sundays.^u

Of the Insolvent Court. The sittings of the Insolvent Court are regulated by a similar rule; being required to be held twice in every week throughout the year, on such days as the Commissioners shall appoint, except that, between the last day of Trinity Term and the 1st of November, it need not meet more than once in six weeks.^x And the same latitude as to the times of sitting exists in a far higher court, the Ju-

^u Fourteenth General Order of 1832. It excepts also "holidays to be hereafter named." But that hereafter appears to be still in the future.

^x 1 & 2 Vict. c. 110, s. 28, re-enacting a similar clause in 7 Geo. IV. c. 57, by which the court was established.

dicial Committee of the Privy Council. By an order of that honourable body, made one hundred and fifty years since, and repeated in the intermediate period, the day of sittings is appointed to be "as he that presides shall direct:"^y and parties are required to hold themselves in readiness to be heard on the days so appointed.^z Nor was any alteration made in this respect by the statute constituting the present Judicial Committee.^a

Of the Judicial Committee of the Privy Council.

A.D. 1667.

A.D. 1687.

A.D. 1746.

There remain to be noticed certain courts, whose proceedings, more than those of any other, bear the impress of the regulations of the ancient Church, viz. the Ecclesiastical Courts, and the Court of Admiralty.

Days by which the court days of the Ecclesiastical Courts and the Court of Admiralty were regulated anciently.

We have before mentioned the general times of sitting of these courts;^b but we may now enumerate the Saints' days by which, what are called the Court Days, were anciently, and still are to a great extent, regulated.

These are said by Oughton^c to be as follows:—

In Hilary Term. — January 12th, St. Hilary;^d 19th, St. Wulfstan; 25th, Conversion of St. Paul.

In Hilary Term.

^y Macqueen's Practice of the Lords and Privy Council, pages 800, 802, 803.

^z *Ib.* 806.

^a 1 & 2 Will. IV. c. 41. See forms of summons to trial, Macqueen, 715, 717.

^b Page 54.

^c Law's Translation, Appendix, v.

^d This should be the 13th.

—February 2nd, The Purification; 3rd, St. Blasius; 10th, St. Scolastica;* 14th, St. Valentine; Ash Wednesday; 24th, St. Matthias.—March 3rd, St. Cedde; 7th, St. Perpetua and Felicitas;^f 12th, St. Gregory; 25th, the Annunciation.

In Easter Term.

In Easter Term.—April 15th, Eastertide; 19th, St. Alphege;^g 24th, St. Mark.^h—May 3rd, The Finding of the Cross; 8th, St. Dunstan;ⁱ Ascension day.

In Trinity Term.

In Trinity Term.—Trinity Sunday—Corpus Christi.—June 5th, St. Boniface;^k 11th, St. Barnabas; 17th, St. Botolph;^l 24th, Nativity of St.

St. Scolastica,
died circa
A.D. 543.

* The sister of St. Benedict; who is said to have seen her soul ascending to heaven like a dove. Her life was written by Pope Gregory I.—Martyr. Rom.

St. Perpetua
and Felicitas.

^f Said to have suffered under the Emperor Severus. We are told that they were torn to pieces by wild beasts. They are both frequently mentioned by St. Augustine; and the former also by Tertullian.—Martyr. Rom.

St. Alphege,
Archbishop,
fl. A.D. 1005—
1012.

^g Who rose from being Monk and Prior of Glastonbury to be Archbishop of Canterbury.—William of Malmesbury. *De Ant. Glast. Ecc.*; Gale, iii. 337; Wharton, *Ang. Sa.* ii.

^h This should be the 25th.

ⁱ But this feast was kept the 19th. Could it be St. Michael? See page 28 and 372.

St. Boniface,
died A.D.
755.

^k Archbishop of Metz. He was a native of England, who was sent by Gregory II. as a missionary into Germany, of which country, from his success in converting its inhabitants, he is called the apostle.—Martyr. Rom.

St. Botolph,

^l Abbot of Icanhoc, a monastery in Lincolnshire, which he built A.D. 654.—See Dugdale's *Monasticon*, iv. 1621; Ranulph Polychron. v. 16; in Gale, 236. The monastery was destroyed by the Danes circa A.D. 870 (Dugdale, u. s.), and St. Botolph's

John the Baptist ; 29th, St. Peter and St. Paul.—
July 7th, St. Thomas ;^m 15th, St. Swithin ; 20th,
St. Margaret ; 26th, St. Anne.

In Michaelmas Term.—October 6th, St. Faith ; ^{In Michaelmas Term.}
13th, St. Edward the Confessor ;ⁿ 18th, St. Luke ;
28th, St. Simon and St. Jude.—November 2nd,
All Souls ; 11th, St. Martin ; 20th, King Edmund ;
25th, St. Catharine ; 30th, St. Andrew.—Dec. 8th,
Conception of the Virgin Mary. °

The Court of Arches sat on the morrow of the ^{Sittings of these courts at present.}
days mentioned in this list. The modern Court

remains, about a century afterwards, were divided into three ^{translated}
parts by order of King Edgar, who gave the head to the monas- ^{A. D. 972.}
tery of Ely ; the half of the body to that of Thorny, in Cam-
bridgeshire, restored by himself, (see Dugdale, ii. 594) ; and
kept the other half among his royal treasures.—John Brompton,
Chr. Twys. 870.

^m Of Canterbury. This was the day of his translation. See p. 150.

ⁿ This was the feast of his translation, which took place at ^{St. Edward the Confessor, translated A. D. 1104.}
Westminster, by the direction of Thomas à Becket. — John
Brompton, Chr. Twys. 956, 1058 ; Chron. Aug., ib. 2255 ;
Hen. Knyghton, ib. 2438. The translation, however, seems to
have been only the taking his body out of its tomb, and re-
placing it there ; for he was originally buried in Westminster
Abbey.—J. Brompton, Chr. Twys. 955.—See Ailred's Life of
St. Edward, ib. 402, 407. He died January the 5th.

° Law's Translation of Oughton, Appendix, vi. These Court
Days it is of which the Terms mentioned in p. 54 are composed,
not of continuous days ; so that the Ecclesiastical Courts would
appear to have attended to the canons of the councils of St. Me-
dard and of Enham (see pp. 25 and 36) less than the Courts of
Common Law. But they probably followed the Decretals. See
page 77.

Days, however, do not strictly conform to these times; though they are said not to vary without some special ground.

Extraordi-
nary and
Special sit-
tings.

Besides these Court Days, certain days, called Extraordinary and Special, are appointed both in the Court of Arches,^p and the other courts, including that of the Admiralty, for hearing any special matters in vacation; and these sittings have acquired the same validity as those held on the regular Court Days.^q

Sittings of the
Court of Ad-
miralty;
of the Prero-
gative Court;

The Court of Admiralty sits on the afternoons of the same days as the Court of Arches. The Prerogative Court is held on the following day; and the Court of Delegates, while it subsisted,^r met the day after that; provided, in either case, the day was not a holiday. The same system is followed in the minor Ecclesiastical Courts.^s

of the minor
Ecclesiastical
Courts.

After this brief notice of the times of sitting of the principal courts, we proceed, according to the plan sketched out above, shortly to state certain rules and decisions of the courts in respect to the computation of holidays in the times allowed for preparing pleadings, or the notices required to be

Computation
of holidays in
the time al-
lowed for
pleadings, &c.

Court of
Arches.

^p The principal ecclesiastical court, so called from the place where it was formerly held, St. Mary on the Arches, or Le Bow.

^q We have noticed above that the Court of Admiralty is said to be always open, p. 249.

^r This was the Court of Appeal. Its power was transferred by the 2 & 3 Will. IV. c. 92, to the Privy Council.

^s Law's Translation of Oughton, Appendix, vii. viii.

given of legal proceedings; and we propose to notice these first in the Courts of Common Law, and then in the Courts of Equity.

Before, and up to the year 1832, none of the writs upon which the proceedings at law were for the most part founded, could be returned; nor could any declaration or other pleading be filed at any other times of the year, than those already noticed by us as included in the terms. ^t So that in all the preliminary stages by which a cause was brought on to trial, it was either suspended during a great part of the year, or if its progress was accelerated, this was only through the practice which prevailed in some instances, of antedating, as of a prior term, a proceeding in fact taken during the vacation. ^u

Effect of the vacations upon pleadings at common law up to A.D. 1832.

By the acts before noticed by us, ^x which were passed as a result of the Commission upon the Courts of Common Law, this state of things was, however, altered; and "all necessary proceedings to judgment or execution allowed to be had," upon

Alteration made in A.D. 1832,

in respect to proceedings to judgment or execution.

^t Report of Commission on the Common Law Courts, p. 98. —Tidd's Practice of Q. B. edit. 1828, pp. 419, 421, 466. A party could, however, be taken in execution by the sheriff, during the vacation, under a writ requiring his appearance in the subsequent term; and, as a consequence, was admitted to be bailed in vacation. The 43 Geo. III. c. 46, s. 16, was passed to remove all doubt upon the latter point.—Tidd, p. 279.

^u Report of Commission on the Common Law Courts, p. 98.

^x Page 82.

the writs therein mentioned, "at the expiration of eight days from the service or execution thereof, on whatever day the last of such eight days shall fall," provided it be not a Sunday, a Christmas day, any day appointed for a public fast or thanksgiving, or some of the days between the Thursday before and the Wednesday after Easter day. In the first case, the following day; in the second, the Wednesday after Easter day, is to be considered as the last day. The act goes on to declare, as we have before noticed,^y that between the 10th of August and the 24th of October, no plea or declaration is to be filed or delivered.

As to filing or delivering pleas.

To carry out the provisions of this act the courts have framed certain general rules. By the first Rule of E. T. 2 Will. IV. as to the days between Maundy Thursday and Easter Wednesday. of these,^z "the days between the Thursday before and the Wednesday after Easter day are not to be reckoned or included in any rules, notices, or other proceedings, except notices of trial and of inquiry:"

Rule of M. T. 3 Will. IV. as to pleadings in the long vacation.

while by the second,^a if the time for pleading, or answering any pleading, has not expired before the 10th of August, the party called upon to plead or answer is to have the same time after the 24th of October, as if the declaration or pleading which he is called upon to plead to, had been filed on that day.

^y Page 82.

^z R. G., E. T. 2 Will. IV.

^a R. G., M. T. 3 Will. IV. r. 12.

Thus were short periods of vacation substituted at common law for the long intervals during which certain stages of a suit were formerly suspended there. The rules establishing these vacations are so clear, that they have not called for much judicial commentary. Some cases have, however, arisen, which we will briefly state.^a Thus, in respect to the long vacation it has been settled that the rule about pleadings during it applies to an enlarged time for pleading, as well as to that originally allowed; and that—although the defendant has accepted short notice for trial, and the effect of thus applying the rule will be to extend the time of trial beyond the sittings after Michaelmas term.^b The long vacation not counted in the time for pleading, though that time has been enlarged, and though the defendant has accepted short notice for trial; Again, it is said to have been decided that a defendant cannot sign judgment for want of a replication during this period, in which the plaintiff and a defendant cannot sign judgment for want of a replication during.

^a Other cases are indeed reported, which are mere affirmations of the plain directions of the acts and rules cited above. Such are *Harrison v. Tait*, 4 Bing. N. C. 443; 6 Dowl. P. C. 611; and *Blackburn v. Peat*, 2 C. & M. 44; 2 Dowl. 293; 4 Tyr. 38, where it is stated that the rule of Easter term, 2 Will. IV. applies to pleadings. Such also are *Lilly v. Gompertz*, 1 Dowl. P. C. 376, and *Hall v. Welchman*, 2 Cr. & Jer. 472; 1 Dowl. P. C. 566, which repeat the direction of 1 Will. IV. c. 3, s. 3, that the days between the Thursday before and Wednesday after Easter are to be considered as part of the term, though the courts do not sit upon them, and therefore that writs are returnable thereon.

^b *Le Fevre v. Molineux*, 6 Dowl. P. C. 153.

But a defendant arrested during it must put in and justify bail.

cannot reply.^c On the other hand, it has been determined that the vacation applies only to declarations and the pleadings founded upon it, and does not excuse a defendant arrested during it from the necessity of putting in bail, and taking such proceedings thereon before a judge at chambers, as would be necessary at any other time.^d

Whit Monday and Tuesday reckoned in the days in which a *ca. sa.* must lie at the sheriff's office.

Thus much for the summer vacation. In respect to Whit Monday and Tuesday, it has been determined that they are included in the four days, during which a writ of *ca. sa.*^e against a party for whom bail has been given, is required to lie at the sheriff's office before proceedings can be taken against the bail. The reason being that the sheriff's office remains open, and therefore search can be made by the bail to discover whether the writ is there, as well then as at any other time.^f

Ultimately settled that the three days following Christmas are not ex-

More discussion has been caused by another question, namely, whether the three days after Christmas, given as holidays by the 3 & 4 Will. IV.

^c Anon. 12 Leg. Ob. 120. Mr. Archbold, however, seems to call this doctrine in question, 10th ed. of Practice, page 154.

^d R. v. Sheriff of Midd. in Woollaston v. Wright, 2 Cr. M. & R. 333; 4 Tyr. 60; 2 Dowl. P. C. 286.

^e *Capias ad satisfaciendum*; the extreme process of the law for compelling payment, to which the creditor was required to have recourse against the party for whom security was given, before he could enforce his claim against those who had given the security.

^f *Armitage v. Rugby*, 5 Ad. & El. 76. The rule applies also to a *sci. fa.*, see *Fraser v. Miller*, 1 Dowl. P. C. 141.

c. 42, are to be excluded from the computation of the time allowed for putting in different pleadings. cluded from the time for pleading, &c.

One case^g decided that they were; because the offices being then closed, the pleading to which an answer was to be given could not be procured from them. An earlier case had decided that they were not;^h and this decision was upheld in a yet more recent case,ⁱ upon the ground that no days could be excluded but those enumerated by the rule of E. T. 2 Will. IV., which these days clearly were not.

This question leads us to a more numerous class of cases in which the point discussed has been, whether Sunday is to be reckoned in the computation of the time required to elapse by the rules of the court in certain cases between one act and another. Where the Sunday is the last day, the question is settled by a recent rule of the courts,^k extending also to Christmas-day and Good Friday, or any other day appointed for a public thanksgiving or fast, and directing that these days shall, in that case, not be counted. This rule expresses what seems to have been the practice before, where the time expired upon a holiday. Thus a holiday, though not a Sunday, but one on which the officers

Sunday, Christmas-day, and Good Friday not reckoned in the time allowed between one act and another, where the last of the days allowed falls upon them.

^g Wheeler v. Green, 7 Dowl. P. C. 195.

^h Charnock v. Smith, 2 Dowl. P. C.

ⁱ Wilkes v. Perks, 6 Scott, N. S. 42; 5 Man. & Gr. 376.

^k R. G., Hil. T. 2 Will. IV. r. 8.

How rules drawn upon a holiday intitled.

were ready, for an extra fee, to open the office, was held to be excluded from the time allowed for putting in a plea, where that time expired upon it; so that judgment could not be signed as for want of a plea. And it was said by Mr. Justice Little-dale, that though rules were sometimes drawn upon such days, for the convenience of suitors, they were always intituled as of the preceding day.¹

Sunday reckoned in time to plead if an intermediate day;

But Sunday is reckoned in the time to plead, if it falls on any intermediate day; for that business is considered as done out of court.^m So also it is

in time given to bail to surrender their principal.

counted as one of the eight days given to bail to render their principal; being "as much a day to occupy a space of time as any other."ⁿ

Not reckoned in the time allowed for a motion in arrest of judgment;

However, there are cases where a Sunday is excluded from any part of the computation. Thus it is not reckoned as one of the days within which a motion in arrest of judgment must be made; for those must be days on which the court could give judgment.^o So also it would appear that in all

nor, it would seem, in any rule for judgment; nor in the time allowed to bail to

rules for judgment the Sunday is excluded, whether the last day or not.^p Nor is it included in the time allowed on rules calling upon bail to appear

¹ Harrison v. Smith, 9 B. & C. 243, overruling *Mesure v. Britten*, 2 H. Bl. 616.

^m *Asmole v. Goodwin*, 2 Salk. 624; *Wathen v. Beaumont*, 11 East, 272; *Shoebridge v. Irvin*, 1 Dowl. P. C. 176.

ⁿ *Creswell v. Green*, 14 East, 638.

^o *Hales v. Owen*, 2 Salk. 624.

^p Dictum in *Roberts v. Quickenden*, 11 East, 248.

and plead to a writ of *sci. fa.*,^q for proceedings against bail are assimilated to rules for judgment.^r Nor is it reckoned among the days on which, as before mentioned, a *ca. sa.* or *sci. fa.* is required to lie at the sheriff's office before put in force against bail; for these must be days when the bail can make search in the office.^s And the same rule has been applied to other cases upon *sci. fa.*, though not relating to bail.^t

plead to a writ of *sci. fa.*;

nor is one of the days when a *ca. sa.* or *sci. fa.* must be left with the sheriff.

Thus much have we found as to the practice of the Courts of Common Law in relation to the seasons of vacation, and to holidays. In the Courts of Chancery, something of the same delays—which we have seen to have existed in the Common Law Courts from the limitation of proceedings to the times of the terms—prevailed, down to a recent period, in

Practice of the Court of Chancery, up to A. D. 1838, as to country causes.

^q I. e. the writ calling upon the bail to show cause why the party who sues out the writ should not have execution against them. Tidd's Practical Forms, 428; Arch. 10th ed. 639.

^r Wathen v. Beaumont, 11 East, 271; Roberts v. Quicken-den, *ibid.* 248.

^s Howard v. Smith, 1 B. & Ald. 528; Scott v. Larkin, 7 Bing. 109; 4 M. & P. 748; 1 Dowl. P. C. 202; which is a stronger case, because the day was a holiday, when the office might have been searched, for an extra fee; but the courts held that the bail were entitled to four days, when they might search without any extra charge. Anon. 1 Dowl. P. C. 143; Goodwin v. Lugar, 6 M. & S. 133.

^t Fraser v. Miller, 1 Dowl. P. C. 141; Furnell v. Smith, 7 B. & C. 694; the sheriff being supposed, if possible, to serve the writ.

General periods of vacation, appointed in 1831.

certain stages of causes, more especially in that large class where a defendant resided more than twenty miles from London.^u But this practice was put an end to by a series of orders published in the years 1828 and 1831; while certain general periods of vacation were established, for all suits, by an order which directs, that the time "between the last seal^x after Trinity Term, and the first seal before Michaelmas Term; and between the last seal after Michaelmas Term, and the first seal before Hilary Term, shall not be reckoned in the computation of time allowed for amending any bill; for filing, delivering, or referring exceptions to any answer; or for obtaining the Master's report upon any exceptions."^y

These periods not computed one day inclusively and the other exclusively.

In computing these periods, it has been decided, that the days by which they are limited, are not to be reckoned, one exclusively, and the other inclusively, as is the case when a certain number of days is given to any party between one event and another; for, in this case, before the computation of time can begin, both events must be past.^z But we are not aware of any other case, decided in respect to these periods of vacation, which has a bearing upon our present subject.

^u Report of the Chancery Commissioners, 1826, p. 68, 71, 75.

^x I. e. the close of the sittings of the Court.

^y 19th Order, 1831.

^z Harrod v. Gibson, Legal Observer, 1844, vol. i. 53; 8 Jurist, 946.

In respect to the time kept as a vacation at Easter, there are, however, two cases worthy of notice appearing in the books. The first determines that a demurrer, *filed* within the time allowed for that purpose by the rules of the Court, is not rendered irregular, by not being *entered*, within that time; if part of such time falls within the period when the office is shut for the vacation.^a The other settles that the defendant must do his part; and *file* his demurrer in time; this being a thing which can be done in vacation.^b

The vacation not reckoned in the time for entering a demurrer. But reckoned in the time for filing it.

These decisions lead us to the question, which, in the Courts of Chancery as in those of Common Law, has been most discussed, namely, whether a Sunday or other holiday is to be reckoned or not, in the computation of the time required to intervene before any particular act.

It seems to be decided that such a day is not to be reckoned, if it forms the last of a series of days within which the act may be done. Thus the Vice-Chancellor of England decided in a case where the last day of the time allowed for taking exceptions to the Master's report was a Sunday, that it was not to be counted;^c and a similar opinion was expressed by his Honour in a subsequent case, when

A Sunday or holiday not reckoned where it is the last day whereon a particular act may be done;

as the taking exceptions.

^a Bullock v. Edginton, 1 Sim. 481.

^b Boys v. Morgan, 9 Sim. 262.

^c Milburne v. Lyster, 5 Sim. 365.

the last day was the fast kept on account of the cholera; though under the peculiar circumstances of the case he thought the party too late. ^d

The last decision affirmed by Lord Brougham; but an opinion expressed that the last day being a holiday made no difference.

Sunday not counted where the last day for obtaining a report upon the sufficiency of an answer.

Doubt whether the Sunday reckoned where an intermediate day.

It must not be one of the days required as notice of motion.

The decision of his Honour in the last of these cases was confirmed by the Lord Chancellor Brougham; who, however, expressed an opinion that the circumstance of the last day being a holiday made no difference. The party had till twelve o'clock on the last night; and if no cause was shown by the opening of the office on the next morning, a certificate granted by the registrar that none was on the file would be regular. ^e However, in a later case, Lord Cottenham, then Master of the Rolls, held, that if the fortnight, limited by the orders of the court for obtaining the Master's report on the sufficiency of an answer, expires on a Sunday, that day is not to be reckoned; but the report may be obtained on the Monday. ^f

Whether a Sunday or holiday at any office of the court is to be reckoned if it is an intermediate day is more questionable. The Vice-Chancellor of England expressed in one case ^g an opinion that it should not. Again, upon a notice of motion, it has been held that a Sunday cannot form the clear day, or, according to the present practice, one of the

^d *Manners v. Bryan*, 1 Sim. 147.

^e *Manners v. Bryan*, 1 M. & K. 455.

^f *Angell v. Westcombe*, 1 M. & C. 48.

^g *Manners v. Bryan*, 1 Sim. 147.

two clear days^h which must be interposed, between the notice and the motion.ⁱ

But this rule is attributed by Vice-Chancellor Wigram, to the circumstance, that the party served is bound to meet the motion upon the very day upon which the notice expires; and, if not prepared, his opportunity of defence may be lost altogether. His Honour remarks also, that unless the intervening Sundays had been counted in the above cited cases of *Boys v. Morgan*; *Milburne v. Lyster*, and *Angell v. Westcombe*, the questions raised in those cases could never have arisen. And in the case of the notice of the examination of a witness *de bene esse*,^k he held that there was no reason for departing from the ordinary mode of computing time, and that the intermediate Sunday must be reckoned.^l For the only object of the notice was to give the opposite party an opportunity of cross-examining the witness if he pleased; and that power would not be lost, though expense might possibly be occasioned, by the cross interrogatories not being ready in time.

Remarks of Vice-Chancellor Wigram on this rule.

Sundays appear to have been frequently reckoned when they were intermediate days.

And they have been held to be counted on a notice of a motion for the examination of a witness.

^h Twenty-second Order of 1828.

ⁱ *Maxwell v. Phillipps*, 6 Ves. 146.

^k I.e. for the purpose of preserving his testimony, he being about to leave the country.

^l *M'Intosh v. Great Western Railway Company*, 1 Hare, 332.

NOTE TO PAGE 375.

ON THE MASTERS IN CHANCERY.

THE Masters in Chancery form part of the judicial system of the Court. Originally they sat in rotation on the Bench, with the Lord Chancellor and the Master of the Rolls; and the form of appointing a Master was, by the Lord Chancellor, on the Bench, putting the Master's hat upon his head, and saying, "You are entitled to take your seat upon this Bench hatted." Hence the familiar expression to denote the complete appointment of a Master was to say that he had been "hatted."

The Masters present in Court heard the different causes argued, and then accounts, and such points as needed further examination, were referred to one of them for inquiry; whence arose the expression of a reference being made to one of the "Masters of the day."

This practice, however, gradually became a mere form. The Masters, indeed, took their seats upon the Bench at the same time with the Judge; but the latter soon intimated to them that they might retire, which they accordingly did. Even this form, in the time of Lord Chancellor Brougham, was discontinued, as interfering with the attendance of the Masters at chambers. Still, on the first day of Term, when the Lord Chancellor goes to Westminster attended by the Judges of his Court, two Masters also accompany him, and take their seats on the Bench. Since the transfer of the right of appointing the Masters from the Lord Chancellor to the Crown, (by the 3 & 4 Will. IV. c. 94,) the appointment is made by Letters Patent.

The sittings of the Masters were regulated by those of the Courts, and hence arose the times of vacation mentioned in the text.

In the present day, however, the Masters are accustomed to continue their sittings during some of the periods when, according to the old practice, they might claim a vacation. So also the holidays mentioned in the text are not taken by some of them; others still keep them.

ANALYSIS

OF THE

CIRCUITS OF THE JUSTICES IN EYRE AND THE JUSTICES
OF ASSIZE,

FROM A.D. 1170 TO A.D. 1349,

Taken from the Lists contained in Dugdale's Chronica Series.

| A.D. | Year of reign. | Number of circuits. | Number of counties in each circuit. | Number of counties into which the jus- tices sent. | Number of justices on each circuit. | Total number of jus- tices sent. | Number of justices of the Bench sent. | Number of circuits on which justices of the Bench sent. |
|------|----------------------|---------------------|--|--|--|-------------------------------------|--|---|
| | Hen. II. | | | | | | | |
| 1170 | 16 | 1 | .. | 5 | 12 | | | |
| 1176 | 22 | 6 | 4 to 8 | 36 | 3 | 18 | | |
| 1179 | 25 | 4 | 8 to 11 | 35 | 5 to 3 | 21 | 6 | 1 |
| | Rich. I. | | | | | | | |
| 1194 | 5 | 1 | .. | Uncertain | 6 | | | |
| 1198 | 9 | 1 | .. | 3 | .. | 3 | 1 | |
| | John | | | | | | | |
| 1208 | 10 | 1 | .. | 1 | 6 | .. | 6 | |
| 1213 | 15 | 8 | 2 to 6 | 30 | 2 to 9 | 43 | 6 | 4 |
| | Hen. III. | | | | | | | |
| 1220 | 5 | 1 | .. | 9 | .. | 7 | 2 | |
| 1224 | 9 | 20 | 1 to 2 | 25 | 3 to 7 | 66 | 4 | 16 |
| 1225 | 10 | 10 | 1 to 2 | 12 | 3 to 6 | 31 | 4 | all |
| 1226 | 11 | 7 | 1 to 8 | 24 | 4 to 7 | 22 | 7 | 6 |
| 1229 | 14 | 1 | .. | 2 | .. | 8 | 5 | |
| 1230 | 15 | 1 | .. | 1 | .. | 7 | 3 | |
| 1231 | 16 | 3 | 1 to 6 | 12 | 5 to 7 | 13 | 7 | all |
| 1232 | 17 | 1 | .. | 1 | .. | 5 | 2 | |
| 1233 | 18 | 8 | 1 to 3 | 13 | 4 to 7 | 27 | 8 | all |
| 1238 | 22 | 1 | .. | 2 | .. | 4 | 3 | |

| A.D. | Year of reign. | Number of circuits. | Number of counties in each circuit. | Number of counties into which the justices sent. | Number of justices on each circuit. | Total number of justices sent. | Number of justices of the bench sent. | Number of circuits on which justices of the bench sent. |
|------|----------------|---------------------|-------------------------------------|--|-------------------------------------|--------------------------------|---------------------------------------|---|
| | Hen. III. | | | | | | | |
| 1240 | 24 | 2 | .. | Uncertain | 5 & 7 | 12 | 5 | both |
| 1245 | 29 | 1 | .. | 2 | .. | 4 | 2 | |
| 1246 | 30 | 1 | .. | 4 | .. | 6 | 3 | |
| 1248 | 32 | 2 | 1 | 2 | 4 & 5 | 5 | 4 | |
| 1249 | 33 | 4 | 1 to 2 | 5 | 5 | 8 | 6 | all |
| 1250 | 34 | 1 | .. | 1 | .. | 4 | all | |
| 1251 | 35 | 2 | 1 | 2 | 4 & 7 | 11 | 3 | 1 |
| 1252 | 36 | 3 | 3 to 4 | 10 | 4 to 5 | { Uncertain, 9 named } | 4 | all |
| 1253 | 37 | 1 | .. | 4 | .. | 4 | 3 | |
| 1254 | 38 | 1 | .. | 2 | .. | 4 | 2 | |
| 1255 | 39 | 3 | 2 to 4 | 9 | 4 to 6 | 14 | 7 | 2 |
| 1256 | 40 | 4* | 3 to 5 | 15 | 4 & 5 | 12 | 6 | 3 |
| 1257 | 41 | 2 | .. | 1 | 4 & 5 | 5 | 4 | both |
| 1258 | 42 | .. | .. | Uncertain | .. | 2 | 1 | |
| 1259 | 43 | 1 | .. | Uncertain | .. | 3 | all† | |
| 1260 | 44 | 9 | 1 to 6 | 31 | 2 to 3 | 16 | 8 | 7 |
| 1261 | 45 | 5 | 1 to 7 | 15 | 3 to 5 | { Uncertain, 11 named } | 6 | all |
| 1262 | 46 | 7* | 1 to 5 | 17 | 4 to 5 | { Uncertain, 20 named } | 6 | 5 |
| 1263 | 47 | 4 | 1 to 3 | 7 | 2 to 4 | 14 | 6 | 3 |
| 1268 | 52 | 9 | 1 to 14 | 35 | 2 to 4 | 24 | 11 | 8 |
| 1270 | 54 | 2* | 1 to 4 | 7 | 2 to 4 | 6 | 1 | 1 |
| 1271 | 55 | 6 | 1 to 2 | 8 | 2 to 5 | { Uncertain, 15 named } | 4 | 4 |
| 1272 | 56 | 2 | 1 & 2 | 3 | 1 to 3 | { Uncertain, 4 named } | none | |

* One for the pleas of the forests.

† Including Hugo le Bigott, chief justiciary.

| A.D. | Year of reign. | Number of circuits. | Number of counties in each circuit. | Number of counties into which the justices sent. | Number of justices on each circuit. | Total number of justices sent. | Number of justices of the Bench sent. | Number of circuits on which justices of the Bench sent. |
|-------|----------------|---------------------|-------------------------------------|---|-------------------------------------|--------------------------------|---------------------------------------|---|
| | Edw. I. | | | | | | | |
| 1274 | 1 | 1 | .. | 1 | .. | 4 | 1 | |
| 1275* | 2 | 1 A | .. | 20 | .. | 2 | 1 | |
| | | 1 | 1 | 5 | .. | 5 | 3 | both |
| 1276 | 3 | 1 A | .. | { Those beyond the Trent } | .. | 1 | | |
| | | 1 | .. | 1 | 4 | .. | 2 | |
| 1277 | 4 | 1 A | .. | Uncertain | 4 | 4 | 1 | |
| | | 1 | .. | 1 | .. | 1 | | |
| 1278 | 6 | 3 | 1 to 3 | 6 | 3 to 7 | 12 | 6 | all |
| 1279 | 7 | 1 | .. | 3 | .. | 5 | 1 | |
| 1280 | 8 | 1 A | .. | Uncertain | .. | 1 | | |
| | | 4† | 1 to 4 | 5 | 4 to 5 | 15 | 4 | 2 |
| 1281 | 9 | 1 A | .. | Uncertain | .. | 1 | | |
| | | 1 | .. | 1 | .. | 5 | 3 | |
| 1284 | 12 | 1 | .. | 1 | .. | 5 | 3 | |
| 1285 | 13 | 1 A | .. | Uncertain | .. | 2 | 1 | |
| | | 3 | 1 | 3 | 2 to 5 | 7 | 3 | 2 |
| 1286 | 14 | 3† | 1 to 2 | { 3 named. Pleas of the Forest beyond Nottingham & Lancashire } | 2 to 3 | 7 | 2 | 1 |
| 1287 | 15 | 2† | 1 | 2 | 2 & 6 | 8 | none | |
| 1288 | 16 | 1 | .. | 1 | .. | 4 | all | |
| 1292 | 20 | 1 A | .. | Uncertain | .. | 1 | | |
| | | 3† | 1 to 4 | 6 | 3 to 5 | { Uncertain, 10 named } | 1 | 1 |
| 1293 | 21 | 4 A | 7 to 10 | 36 | 2 | 8 | none | |
| | | 4 | 1 | 4 | 2 to 4 | { Uncertain, 10 named } | 1 | 1 |

* In this year justices of assize are for the first time named as distinct from the justices itinerant. In the subsequent parts of this table they will be distinguished by the letter A following the number of circuits.

† One for the pleas of the forests. ‡ Two for the pleas of the forests.

| A.D. | Year of reign. | Number of circuits. | Number of counties in each circuit. | Number of counties into which the justices sent. | Number of justices on each circuit. | Total number of justices sent. | Number of justices of the Bench sent. | Number of circuits on which justices of the Bench sent. |
|------|----------------|---------------------|-------------------------------------|--|-------------------------------------|--------------------------------|---------------------------------------|---|
| | Edw. I. | | | | | | | |
| 1298 | 27 | 1 | .. | 1 | .. | 5 | 1 | |
| 1301 | 29 | 1 A | .. | Uncertain | .. | 1 | | |
| 1302 | 30 | 1 | .. | 1 | .. | 5 | | |
| 1303 | 31 | 1 | .. | 1 | .. | 4 | 2 | |
| 1304 | 32 | 1 A | .. | 10 | .. | 1 | | |
| 1305 | 33 | 1 A | .. | 9 | .. | 4 | 2 | |
| 1307 | 35 | 1 A | .. | 10 | .. | 1 | 1 | |
| | Edw. II. | | | | | | | |
| 1311 | 4 | 7 A | 3 to 6 | 36 | 3 | 18 | 4 | 4 |
| | | 1 | .. | 1 | .. | 4 | 1 | |
| 1313 | 6 | 2 | .. | 1 | .. | 5 | 3 | |
| | Edw. III. | | | | | | | |
| 1330 | 3 | 2 | 1 | 2 | 5 | 10 | 3 | both |
| 1331 | 4 | 2 | 1 | 2 | 6 | 12 | 1 | 1 |
| 1334 | 7 | 2 | 1 | 2 | 4 & 5 | 8 | 1 | both |
| 1349 | 22 | 1 | .. | 1 | .. | 5 | 3 | |

From the way in which certain names occur in some of the lists of the justices in Eyre, as given by Sir William Dugdale, it seems to us probable that some of the persons named as such were justices of the one or the other Bench, besides those whose names appear in the lists of the justices of the Queen's Bench or Common Pleas; but we have strictly confined ourselves to the names which appear in the latter lists.

Time when the circuits made.

No record is preserved, in the greater number of instances, of the time of the year when the circuits were made. However in a few cases the time is recorded. Thus we learn that the circuit was held in A.D. 1194 and 1208, in September; in A.D. 1227, on the 30th of March; in A.D. 1233, on the

1st of August; and in A.D. 1240 and 1246, at the end of June.

It is interesting to remark the gradual cessation of special commissions of justices in eyre and of assize, as, under the operation of the statutes mentioned in our second chapter, the system of sending regularly the Judges of the Bench to try causes in the different counties came into operation.

Gradual cessation of commissions of justices in eyre.

We have added a statement of the counties into which the commissions of justices in itinere and of assize appear, from Sir W. Dugdale's lists, to have been sent, and the number of times of their coming into each county; and also a notice of the number of clergy who are specified as having acted as justices in itinere; for there are no persons described as clergymen in the lists of the justices of assize.

Statement of the different Counties into which Justices in Itinere and Justices of Assize appear to have been sent between A.D. 1170 and 1349, and of the number of times they were sent into each.

The first column under each head contains the cases in which one or more of the Justices of the Bench were on the commission. The second column contains those in which no Justice of the Bench is named on the commission.

| Counties. | Justices in Itinere. | | Justices of Assize. | |
|--------------------------------|----------------------|-------------------|---------------------|---|
| Bedford | 9* A.D. 1268 | 5 | 2 | 1 |
| Berks | 11† A.D. 1252, 1261 | 2 | 2 | 1 |
| Bucks | 9* A.D. 1268 | 4 | | |
| Cambridge | 13* A.D. 1268 | 2 | 2 | 1 |
| | † A.D. 1261 | .. | 2 | 1 |
| Cornwall | 8 | 5 | 2 | 2 |
| Cumberland | 8 | 5 | 1 | 2 |
| Derby | 8 | 3 | 1 | 2 |
| Devon | 6 | 4 | 2 | 1 |
| Dorset | 7* A.D. 1268 | 3 | 2 | 2 |
| Durham (The first, 1133) | 2 | 1 | | |
| Essex | 11 | 2 | 2 | 1 |
| Gloucester | 10* A.D. 1268 | 3, one A.D. 1268 | 2 | 2 |
| Hants | 10* A.D. 1268 | 3, one, A.D. 1226 | 1 | 1 |
| | one A.D. 1226 | | | |
| Hereford | 10* A.D. 1268 | 5, one A.D. 1268 | 3, one | |
| | † A.D. 1226, 1261 | | A.D. | |
| | one A.D. 1293 | | 1293 | |
| Hertford | 13† A.D. 1261 | 4 | 2 | 1 |
| Huntingdon | 12* A.D. 1268 | 4, one A.D. 1268 | 2 | 1 |
| Kent | 7† A.D. 1313 | 3 | 1 | 2 |
| Lancaster | 7 | .. .. | 2 | 1 |
| Leicester | 9, one A.D. 1262 | 3, one A.D. 1262 | .. | 3 |
| Lincoln | 8 | 4 | 2 | 2 |
| Middlesex | 7† A.D. 1275 | 1 | | |
| Norfolk | 8† A.D. 1268 | 5 | 1 | 2 |

* Three commissions in the year.

† Two commissions in the year.

| | Justices in Itinere. | | Justices of Assize. | |
|------|----------------------|-----------------------------------|---------------------|------------------------|
| .... | 13* A.D. 1268 | 2 | 1 | 2 |
| | † A.D. 1252 | | | |
| .... | 9, one A.D. 1293 | 4 | 2 | 1, A.D. 1293 |
| .... | 8 | 5 | 1 | 2 |
| .... | 8† A.D. 1252, 1261 | 5 | 1 | 1 |
| .... | 5 | 4 | 1 | 1 |
| .... | 7* A.D. 1268 | .. .. | 3 | 2 |
| .... | 7 | 4 | 2 | 2 |
| .... | 7* A.D. 1268 | 3 | 3 | 2 |
| .... | 7 | 4 | 2 | 1 |
| .... | 5† A.D. 1268 | 4, one A.D. 1268 one A.D. 1293 | 1 | 2, one A.D. 1293 |
| .... | 5 | 3 | 1 | 2 |
| .... | 7 | 2 | 1 | 2 |
| .... | 7 | 3 | 2 | 1 |
| .... | 9 | 2 | 2 | 2 |
| .... | 7* A.D. 1268 | 2 | 1 | 3 |
| .... | 5 | 4 | 2 | 1 |
| .... | .. .. | 1 | | |
| .... | 1 | 2 | | |
| der- | .. .. | 1, A.D. 1332 | | |

n mind that commissions of assize appear to several years into various counties, though there ticular counties into which they were sent.

missions of justices itinerant to try causes arising , or what were called Pleas of the Forest, are been sent into eight counties, namely, one into berland; two into Essex; one into Hampshire; ; two into Nottinghamshire; one into Rutland- orkshire.

in one year. † Two commissions in one year.

*Clergymen filling the under-mentioned Offices are m
to have acted as Justices Itinerant in the fi
years :—*

A.D.

1170—Two Abbots.

1179—Three Bishops and three Clerks.

1213—Five Bishops, two Abbots and three Cl

1220—Two Abbots.

1225—One Bishop and three Abbots.

1225 }
1226 } —Reginald Duket, Archdeacon of Bed
1231 }

1226 }
1231 } —William de Eboraco, Prepositus of B
1233 }
1238 }
1240 }

1251—Two Bishops and one Clerk.

1254 }
1255 } —The Abbot de Burgo.
1256 }

1271—An Abbot and a Prior.

1278—A Bishop, twice.

INDEX.

A.

- ABBOT, ARCHBISHOP**, opposes Book of Sports, 228.
- ABBOTS**, acted as Judges in Eyre, 61, note, see 404.
- ABSOLUTION**, on Good Friday, 15, 321.
- ACCESSION OF SOVEREIGN**, observance of, as a holiday, 374, 377.
- ACCOUNTANT-GENERAL**, holidays kept in office of, 370 to 375.
- ADJOURNMENT**, Court may sit for purposes of, on a dies non, 244.
- ADMIRALTY COURT**—Held to be always open, 249—Sittings of, when held, 384.
- ADVENT**—Observance as a time of vacation, 61, 64, and note, 78—Fast enjoined during, 333—disuse of, 334.
- ADVENT TO EIGHT DAYS AFTER EPIPHANY**—Prohibition during, of legal proceedings, 25, 36, 37—of marriages, 217, 218.
- AFFIDAVIT OFFICE**, holidays kept by, 370 to 374.
- AGAPÆ**, holding in the churches forbidden, 338.
- AGATHA, COUNCIL OF**—Enjoins fasting on the Saturday, 297—Exempts Lord's Day from Lent fast, 311.
- AGATHA, ST.**—Female labour forbidden upon feast of, 129—Labour partly forbidden upon, 132—Legends as to, 161—Her feast abolished, 177, 186.
- AGNES, ST.**—Female labour forbidden upon feast of, 129—Labour partly forbidden upon, 132—Legends as to, 158—Her feast abolished, 177, 186.
- AGRICULTURAL LABOUR.**—See Lord's Day. As to other festivals, see 131.
- AKARIAS, ARCHBISHOP**, story as to, 111.
- ALBAN, ST.**—Labour upon feast of, partly forbidden, 132—Legends as to, 167—His feast abolished, 177, 186.
- ALEXANDER, BISHOP**—Enjoins a fast from Ascension Day to Pentecost, 332—throughout Advent, 334.

- ALEXANDER III., POPE**—Allows capture of herrings, &c. on the Lord's Day, 176—Forbids it on certain days, 176.
- ALFRED**—Laws as to crime in holy seasons, 103, 335—Concedes certain days to free labourers, 106—to slaves, 106.
- ALL SAINTS**—Legal business forbidden upon day of, 38—Institution of, as a festival, 48, 49—Labour upon, forbidden, 102, 128, 130, 135—allowed, 186—observance of, as a holiday, 374.
- ALL SOULS**—Return days calculated from, 55—Labour upon day of, partly forbidden, 132—Feast of, abolished, 177, 186—Observance of, as a holiday, 374—Morrow of, a Court day in the Arches Court, 383.
- ALPHEGE, ST., who he was**—Morrow of, a Court day in the Arches Court, 382.
- AMBROSE, ST., forbids feasting in the churches**, 338.
- ANDREW, ST.**—Labour upon day of, forbidden, 128, 135—allowed, 186—observance of, as a holiday, 374—Morrow of, a Court day in the Arches Court, 383.
- ANNE, QUEEN, law of, allowing hackney coaches to ply on the Lord's Day**, 194.
- ANNE, ST.**—Labour upon day of, forbidden, 136—Her feast abolished, 177, 186—Morrow of, a Court day at the Arches Court, 383.
- ANNUNCIATION, FEAST OF**—When kept, 39—When introduced, 39—Labour upon, forbidden, 127, 129, 135—allowed, 186—Observance of, as a holiday, 372—Morrow of, a Court day in the Arches Court, 382.
- ANSWER, holiday not reckoned in obtaining Master's report as to, when the last day**, 394.
- ANTICHRIST, would forbid labour on the Lord's Day**, 94.
- ANTIOCH, COUNCIL OF**—Forbids leaving church before the Communion, 280—prayers for those excommunicated, 280—strangers partaking of the Communion, 280.
- APOLLONIUS, ST., Canon attributed to, as to the observance of the Lord's Day**, 98.
- APOSTOLIC CANONS**—Forbid fasting on the Lord's Day, 276—leaving church before the Communion, 280—fasting on the Sabbath, 295.
- APOSTOLIC CONSTITUTIONS**—Require leisure for servants on the Sabbath and Lord's Day, 90—and on various festivals, 100—Forbid fasting on the Lord's Day, 276—on the Sabbath, 295—

- Exhort to attendance at church, on the Lord's Day, 279—on the Sabbath, 298.
- APOSTLES, FEASTS OF**—Observed as legal holidays, 23, 29, 38, see under their names—Labour upon, forbidden, 130, 131—allowed, 186—Theatrical shows forbidden upon, 212.
- AQUINAS, THOMAS, ST.**—How painted, 141—Wrote Service for Corpus Christi Day, 141.
- ARCHERY.**—See Lord's Day, II. 224.
- ARCHES COURT**—Sittings of, 381 to 383—Whence its name derived, 384.
- ARNULPH, ST.**—Who he was, 372—Observance of his day as a holiday, 372.
- ARREST.**—See Lord's Day, III. 247, 256—Judgment, arrest of.
- ARTISANS**, forbidden to labour on the Lord's Day, 91.
- ARUNDEL, ARCHBISHOP**—Forbids markets on feast days, 121—Enjoins attendance at church on the Lord's Day, 286.
- ASCENSION DAY**—Fairs forbidden upon, 123—Labour forbidden upon, 127, 129, 131, 135—specially, 176—allowed, 186—Fast after, see Alexander, Bishop—Observance of, as a holiday, 371—Morrow of, a Court day in the Arches Court, 382.
- ASCENSION DAY TO OCTAVE OF WHIT SUNDAY**, legal proceedings forbidden during, 38.
- ASCENSION WEEK AND TWO FOLLOWING**, marriages forbidden during, 248, note.
- ASH WEDNESDAY**—Observance of, as a holiday, 370—Morrow of, a Court day in the Arches Court, 382.
- ASSIZES**—What, 57—Judges of, 57, 58, 397 to 404—Laws as to time and mode of taking, 66 to 68—Power to judges of, to try other matters, civil, 69—and criminal, 70 to 72—Kinds of, 83—When said to be turned into a jury, 84—No attain of, and why, 84.
- ASSUMPTION OF VIRGIN MARY**—Feast of, when kept, 39—when introduced, 39—Date assigned to event, 41—Labour forbidden upon feast of, 102, 128, 130, 135—Feast abolished, 186.
- ATHELSTAN**—Forbids, on the Lord's Day, legal business, 36—trading, 107—Excludes crimes on Rogation days from compensation, 335.
- AUGUSTINE, ST., OF ENGLAND**—Labour upon his feast forbidden, 130, 131—Bull as to keeping, 136—When his day kept, 162—His feast abolished, 177, 186—observance of, as a holiday, 372.

AUGUSTINE, ST. OF HIPPO—Extent to which causes brought before, 33—Sentiments as to differences of customs, 297.

AUSPICES, consultation of, allowed by Constantine, 17, note.

AUXERRE, COUNCIL OF—Forbids rural work on the Lord's Day, 94—Enjoins fasting before the great festivals, 339.

AWARD.—See Process, 259.

B.

BAIL.—See Lord's Day, III. 261.—Must be put in in vacation, 387, see 385—Lord's Day included in time given to, to render their principal, 390—excluded on rules calling on them to appear on a sci. fa. 391.

BAKING.—See Lord's Day, I. 199.

BANK, holidays kept at, 370 to 374, 378.

BANKRUPT COURT, sittings of, 380.

BANKRUPT OFFICE, holidays kept at, 377.

BAPTISM—White robes worn at, 10—Seasons of, 10.

BARBERS.—See Lord's Day, I. 118.

BARNABAS, ST.—Labour upon day of, forbidden partially, 128—wholly, 130—allowed, 186—His feast omitted at Reformation, Addenda—observance of, as a holiday, 254, 372—Morrow of, a Court day at the Arches Court, 382.

BARTHOLOMEW, ST.—Labour upon day of, forbidden, 128, 130, 135—allowed, 186—Observance of his day as a holiday, 373.

BATHING, on the Lord's Day allowed, 94.

BENEDICT, ST.—Labour upon day of translation of, forbidden before mass, 133—Legend as to, 171—His feast abolished, 177.

BERKHAMPSTED, COUNCIL OF—Forbids labour and travelling upon the Lord's Day, 103—Enjoins fasting on slaves, 346.

BILLS, not protestable on the Lord's Day, Christmas Day, Good Friday, or any day appointed as a public fast or thanksgiving, 204.

BIRINUS, ST., who he was, 47.

BIRTHDAY OF PRINCE OF WALES AND OF QUEEN CONSORT, observance of, as a holiday, 375, 377.

BIRTHDAY OF SOVEREIGN, observance of, as a holiday, 374, 377, 378.

BISHOP'S ACCESSION, festival upon, 12.

- BISHOP'S JURISDICTION JUDICIAL**—Origin of, 31—Laws of Justinian as to, 32—of Charlemagne, 33—Rendered gratuitously, 33—Extent to which recourse had to it, 33.
- BISHOPS**—Acted as judges in eyre under Normans, 61, note, 404—The having a church not in connexion with, forbidden, 281—Directed to visit prisoners on the Lord's Day, 282—on Wednesdays and Fridays, 342.
- BLASIUS, ST.**—Labour upon day of, partially forbidden, 132—Legends as to, 167—His feast abolished, 177, 186—Morrow of, a Court day in the Arches Court, 382.
- BONIFACE, ST. AND BOTULPH, ST.**—Legends as to, 382—Morrow of, Court days at the Arches Court, 382.
- BRAGA, COUNCIL OF**—Prohibits fasting on the Lord's Day, 277—on Christmas Day, 299—Enjoins processions in Lent, 318.
- BRITISH MUSEUM**—Holidays kept at, 378.
- BUSINESS.**—See Lord's Day, I., 91 ; Feast Day.
- BUTCHERS.**—See Lord's Day, I., 190.

C.

- CABINET COUNCIL.**—See Lord's Day, III., 241.
- CÆSAR AUGUSTANUM, COUNCIL OF**, forbids fasting on the Lord's Day, 277.
- CALLING, ORDINARY.**—See Lord's Day, III., 268.
- CANDLEMAS**—What festival so called, 40.
- CANUTE**—Appoints legal vacations, 37—Forbids, on the Lord's Day, the execution of criminals 37—trading, public assemblies, and earthly works, 109—labour, 110—Laws of, as to crime in holy seasons, 110—Forbids hunting on the Lord's Day, 224—Enjoins observance of feasts and fasts, 305—fasting in Lent, 316—and on all appointed fasts, 347.
- CAPITULARIES**—What they were, 98, note—Forbid servile work on the Lord's day, 98—or on festivals, 102—games on the Lord's Day, 220—Enjoin attendance at church on the Lord's Day, 284—the reception of the communion at Easter, 301—the observance of the Ember fasts, 330—of the greater Litanies, 336.
- CARRIAGES.**—See Lord's Day, I., 204.
- CARRIERS AND CARTERS**, travelling of, on the Lord's Day, forbidden, 190.

- CARTHAGE, IV. COUNCIL OF**—Forbids attendance at games or festivals, 213, 214—leaving church during service, 279.
- CA. SA.**—What, 389—What days excluded from time during which it has to lie at the sheriff's office, 388, 390.
- CATHARINE, ST.**—Labour upon her festival forbidden partially, 129—wholly, 130—Legends as to, 156—Her wheel, 157—Her feast abolished, 177—Certain customs upon her day prohibited, 179—Morrow of, a Court day in the Arches Court, 383.
- CATHOLIC SERVICES**, dramatic character of, 296.
- CATTLE.**—See Lord's Day, I., 204.
- CECILIA, ST.**—Labour upon her festival forbidden partially, 132—Legends as to, 170—Her feast abolished, 177, 186.
- CEDDE, ST.**—Labour upon his festival forbidden, 136—Legends as to, 171—His feast abolished, 186—Morrow of, a Court day in the Arches Court, 382.
- CHAIR OF ST. PETER, FEAST OF**—Labour upon, forbidden, 127, 131—Origin of, 139—Abolished, 186.
- CHALONS, COUNCIL OF**, forbids rural work on the Lord's Day, 96.
- CHANCELLOR, SECRETARY OF**, holidays observed by, 377.
- CHANCERY, COURT OF.**—See Lord's Day, III., 192—Holidays in offices of, 371 to 377—Course when Easter or Whitsuntide fall in term, 376—Vacations kept by, 378, 391, 392—how computed, 392.—See Demurrer.
- CHARLEMAGNE**, law of, as to trials before bishops, 33.
- CHARLES I.**—Allows certain games on the Lord's Day, 229—Forbids other games, 342—Encourages wakes, 229, 340—Enjoins the abstinence from flesh at certain times, 364—The day of his death observed as a holiday, 371.
- CHARLES II. LAWS OF**—Forbid on the Lord's Day, legal process, 82—labour, 192—Enjoin attendance at church on 29th of May, 303—observance of that day as a holiday, 372.
- CHEESE**, forbidden in Lent, 313.
- CHICHELE, ARCHBISHOP**—Enjoins the keeping of St. George's day, 82—Confuses the Lord's Day with the Sabbath, 121.
- CHILDEBERT**, orders prisoners to be visited on the Lord's Day, 283.
- CHRISTIANS**, feelings of, as to amusements, 207—211.

- CHRISTMAS DAY**—Observance of, in Eastern Church, 9—as a legal holiday, 23, 82, 377, 378—Penalty for stealing upon, 105—Labour upon, forbidden, 102, 135, 176—allowed, 186—Capture of game upon, forbidden, 202—Bills not protestable upon, 203—Theatrical shows forbidden upon, 212—Fasting upon, forbidden, 299—Origin of custom of fasting upon, 299—Prisoners released upon, 324—Excluded in computation of time, when, 389.
- CHRISTMAS DAY, AND SEVEN DAYS BEFORE**, Legal proceedings forbidden during, 30.
- CHRISTMAS DAY, AND THREE DAYS AFTER**—To be kept as vacation, 82—Observance of, as holidays, 374, 376, 377—Included in time for putting in pleadings, 389.
- CHRISTMAS DAY, AND FOUR DAYS AFTER**—Labour forbidden upon, 127, 129, 131—allowed, 186—Observance of, as holidays, 274.
- CHRISTMAS DAY, AND SEVEN DAYS AFTER**—Labour forbidden during, 131—allowed, 186—Observance of, as holidays, 374.
- CHRISTMAS TO EPIPHANY**, observance of, as holidays, 371, 374.
- CHRISTMAS TO EIGHT DAYS AFTER EPIPHANY**, prohibition during, of legal proceedings, 25, 36, 37, 38, 51.
- CHURCH, ATTENDANCE AT**.—See Lord's Day, III., 279—Sabbath, 288—Easter Week, 300—November 5th, 301—May 29th, 303—Festivals, 304—Virgin Mary, 305—Prohibition against leaving it, during sermon, 279—before communion, 280—Required to be under local bishop, 280.
- CHURCH, FEAST OF DEDICATION OF**.—See Wakes.—Prohibition upon, of legal proceedings, 45—of labour, 128, 131, 135—To be kept on one particular day, 340—Observance of, enjoined, 340.
- CHURCH, FEAST OF SAINT TO WHOM DEDICATED**—Prohibition upon, of legal proceedings, 38—of labour, 128, 131, 135—Observance of, forbidden, 177, 340.
- CHURCHES AND CHURCH YARDS**.—See Markets.
- CIRCUITS**, in time of Henry II., 59, 60, 397 to 400.
- CIRCUMCISION, DAY OF THE**—Labour forbidden upon, 102, 127, 129, 130, 131, see Errata, 135—allowed, 186—Observance of, as a holiday, 371.
- CLEMENT III.**, Forbids marriages, when, 210.
- CLEMENT, ST.**—Labour upon day of, forbidden partially, 129—wholly, 132—Legends as to, 155—His feast abolished, 177, 186—Certain customs forbidden upon it, 179.
- CLERGY**, as judges in eyre, 59, 404.

- CLOVISHOFF, COUNCIL OF**—Forbids business and journeyings on the Lord's Day, 104—games, &c., on Rogation Days, 213—Enjoins attendance at church on the Lord's Day, 285—on festivals, 305—fasts in June, September and December, 330—fasts and litanies in Rogation Days, 335—the observance of the Greater Litanies, 336.
- COMMON LAW COURTS.**—See Courts of Common Law.
- COMMUNION, THE**—Leaving church before it, forbidden, 280—Regulations as to partaking in, 280—Communicating in Lent, enjoined every day, 317—every Lord's Day, 318—Custom of communicating four days a week, 298.—See Excommunication.
- CONCEPTION OF THE VIRGIN**—Institution of feast of, 39—Labour upon it forbidden, 130, 135—allowed, 131—Feast of, abolished, 186—Morrow of, a Court day in the Arches Court, 383.
- CONSTANTINE, EMPEROR**—Forbids legal proceedings on the Lord's Day, 17—Allows consultation of auspices, 17, note—Forbids mechanical labours on the Lord's Day, 91—Allows rural labours, 91.
- CONSTANTINOPLE**, legal holiday on the day of its foundation, 18.
- CONTEMPT OF COURT.**—See Lord's Day, III., 259.
- CONTRACTS.**—See Lord's Day, III., 263.
- CORONATION**, day of, observed as a holiday, 374, 378.
- CORPUS CHRISTI**—Prohibition upon, of fairs, 123—of the sale of shoes, 125—of labour, 135—Institution of, 141—Splendid ceremonial upon, 141—Abolished, 186—Morrow of, a Court day in the Arches Court, 382.
- COUNCILS.**—See Agatha; Antioch; Auxerre; Berkhamsted; Braga; Cæsar Augustanum; Chalons; Clovishoff; Coia; Eliberis; Enham; Erphurt; Gangra; Gerunda; Laodicæa; Lateran; Lerida; London; Lyons; Macon; Mayence; Medard; Nice; Orleans; Oxford; Rheims; Rouen; Sardica; Seligenstadt; Tarragona; Toledo; Tours; Tribury; Trullo.
- COUNTY COURT**, may be held on a dies non juridicus, 242.
- COURT MARTIAL**, always open, 7, 240,
- COURTS OF COMMON LAW**—Officers of, cannot make holidays while courts are sitting, 256—holidays kept by, 369 to 374, 375, 377, 385 to 387.
- COIA, COUNCIL OF**, enjoins attendance at church on the Lord's Days, 285.

- CRANMER, ARCHBISHOP—Forbids sale of victuals during divine service, 184—Enjoins attendance at parish church, 287—Discourages fasting, 350.
- CRIME IN HOLY SEASONS, laws as to, 105, 110, 325, 335.
- CRIMINALS.—See Lord's Day, III., 245.
- CRISPIN, ST., who he was, observance of his day as a holiday, 373.
- CROSS, EXALTATION AND FINDING OF THE—Labour upon the feasts of, forbidden, 128, 131, 135—Legends as to, 140, 143—Abolished, 177, 179—Observance of, as holidays, 373, 374—Morrow of Finding of the, a Court day in the Arches Court, 382.
- CUSTOM, dependance of legal sittings upon, 81.
- CUSTOMS ECCLESIASTICAL, VARYING, opinion of St. Augustine as to, 297.
- CUSTOMS, OFFICES OF THE, holidays kept by, 370 to 374, 378.

D.

- DARREIN PRESENTMENT, assize of, what, 84.
- DECLARATION.—See Process, 257.
- DECREE, service of, on the Lord's Day, void, 82.
- DECRETUM GRATIANI—Canon as to observance of the Lord's Day, 99—What it is, 218.
- DEDICATION OF CHURCH.—See Church, Dedication of.
- DELEGATES, COURT OF—What it was, 384—When it sat, 384.
- DEMURRER, effect of the vacation on the time allowed for entering or filing, 393.
- DIES NON JURIDICUS—Course when judicial act appointed to be done upon, 254—Statute fixing day as judicial, though incidentally, overrules a contrary custom, 256.
- DIONYSIUS, ST.—Labour upon day of, partially forbidden, 132—Legends as to, 169—His feast abolished, 170, 186.
- DISPENSATIONS for hearing causes in Lent, 62.
- DISPENSATIONS AND ENTRIES, CLERK OF, holidays kept by, 377.
- DOMINICA IN ALBIS, what Sunday so called, 10.
- DOMINIC, ST.—When he lived, 47—Feast ordered to be observed, 129—abolished, 186.
- DOUBLE FESTIVALS, what so called, and why, 78.

DROVERS.—See Lord's Day, I., 190.

DUNSTAN, ST., FEAST OF—Prohibition upon, of legal proceedings, 37—of labour partially, 132—Abolished, 177, 186—Observance of, as a holiday, 372—Morrow of, a Court day in the Arches Court, 382.

E.

EASTER DAY—Special prohibition of labour upon, 176—Injunction to communicate upon, 301.

EASTER EVE, expectation of Christ's coming upon, 16.

EASTER, TWO DAYS BEFORE, not included in rules, notices, &c. 387.

EASTER, SEVEN DAYS BEFORE—Prohibition during, of legal business, 18, 19—of games, 212.

EASTER, TWO DAYS AFTER—Kept as vacation, 82—Labour forbidden during, 117—allowed, 186—Observance of, as holidays, 371, 377—Not included in rules or notices, &c., 386.

EASTER, THREE DAYS AFTER—Labour forbidden during, 130, 131, 135—allowed, 186—Observance of, as holidays, 371.

EASTER, SIX DAYS AFTER—Prohibition of labour during, 101, 102—Attendance at church enjoined, 300—Observance of, as holidays, 371, 376.

EASTER, SEVEN DAYS AFTER—Kept as a festival, 10—Prohibition during, of legal proceedings, 18, 19, 25, 30—of games, 212, 213, 215—of marriages, 217.

EASTER, FOURTEEN DAYS AFTER—Prohibition during, of legal proceedings, 36, 51—of marriages, 218—Morrow of, a Court day in the Arches Court, 382.

EASTER TO PENTECOST—Kneeling not customary, 300—Fasts suspended during, 300.

EASTER TO PENTECOST AND SEVEN DAYS AFTER, Theatrical amusements forbidden, 213.

EAST INDIA HOUSE, holidays kept at, 370 to 374, 378.

ECCLESIASTICAL COURT—Citations, see Lord's Day, III., 262. Holidays kept in, 370, 377—Court days, 381 to 383.

EDGAR—Forbids legal proceedings on feasts and fasts, 36—trading and public meetings on the Lord's Day, 108—Enjoins the due observance of festivals, 306—Distributes St. Botolph's body, 383.

- EDMUND, ST., CONFESSOR—Observance of his feast directed, 129
—Labour partially forbidden upon, 132—Account of him, 164
—His feast abolished, 177, 186.
- EDMUND, ST., KING AND MARTYR—Labour forbidden on his
festival, 132—Account of, 165—His feast abolished, 177, 186
—Morrow of, a Court day in the Arches Court, 383.
- EDMUND, ST., MARTYR—Legal business forbidden on his day, 37
—Who he was, 37—His feast abolished, 177, 186.
- EDWARD THE CONFESSOR—Vacations fixed by, 38—His trans-
lation, 383—Morrow of, a Court day in the Arches Court, 383.
- EDWARD THE ELDER—Forbids legal proceedings on feasts and
fasts, 36—the execution of criminals on the Lord's Day, 37—
trading on the Lord's Day, 106—working on any feast, 106—
Enjoins the observance of feasts, 346.
- EDWARD III., Law of, forbidding exposition of wool on the Lord's
Day or on solemn feasts, 123.
- EDWARD VI.—Laws of, as to feasts, 183 to 185—as to attendance
at parish church, 287—as to observance of fish days, 351.
- EGBERT, ARCHBISHOP—Forbids servile works and business on the
Lord's Day, 105—marriages, when, 218—leaving church
during service, 285.
- EGGS, eating, in Lent, forbidden, 313.
- EGIDIUS, BISHOP, forbids labour on certain days, 129.
- ELECTIONS.—See Lord's Day, I., 204.
- ELIBERIS, COUNCIL OF—Enjoins attendance at church on the
Lord's Day, 279—Prohibits the concourse of women at vigils,
337.
- ELIZABETH, QUEEN—Forbids the selling victuals or wares on
Sundays and feasts during the divine service, 188—Discoun-
tenances laws for the better observance of the Lord's Day, 189
—Allows use of certain games on the Lord's Day, 225—Laws
of, direct outlawries to be proclaimed at the church doors on
the Lord's Day, 250—enjoin attendance at church, 289—the
observance of fish days, 353 to 358.
- ELYN, ST., who, 179.
- EMBER WEEKS.—See Fasts of Four Seasons.—Origin of name,
16, in note—Marriages forbidden in, 218—Injunctions to keep,
in the mediæval period, 328 to 331—at the Reformation, 332.
- END OF WORLD, belief in near approach of, 16, 208.

ENHAM, COUNCIL OF—Fixes legal vacations, 36—Forbids trading, public assemblies, and mundane works on the Lord's Day, 103—marriages, when, 218—hunting on the Lord's Day, 234—Enjoins observance of vigils, 339—of fasts generally, 347.

ENQUEST.—See **INQUEST**, 65.

ENROLMENT OFFICE, holidays kept by, 370 to 374.

EPIPHANY—What commemorated anciently upon, 9—Legal proceedings forbidden upon, 23, 176, see **Advent**—Labour forbidden upon, 102, 127, 129, 131, 135—allowed, 186—Marriages at, see **Advent**, **Christmas**—Theatrical shows forbidden upon, 212—Observance of, as a holiday, 371.

EPIPHANY, OCTAVE OF, labour partially forbidden upon, 132.

ERPHURT, COUNCIL OF, forbids legal proceedings, when, 30.

ESSEIGN DAYS, what, 56.

EVANGELISTS, DAYS OF.—See **Mark**, **Luke**.—Law proceedings forbidden on, 29—Labour forbidden upon, 130—allowed, 186.

EVIDENCE of court having sat on a day non juridicus, what admissible as, 253.

EUSTACHIUS, ABBOT, mandate as to the observance of the Lord's Day, 111.

EXAMINERS' OFFICE, holidays kept by, 370 to 374.

EXCHEQUER, COURT OF.—See **Lord's Day**, 243.—May sit out of term, 244.

EXCHEQUER, THE, holidays kept by, 370 to 374, 378.

EXCISE, THE, holidays kept by, 370 to 374, 378.

EXCOMMUNICATION, kinds of, 96, note.

EXECUTIONS—Not in holy seasons, 29—Not on **Lord's Day**, 36, 37.

EXEMPTIONS—Allowing labour on holidays, 176—Allowing use of flesh on fish days, 352.

EXETER, SYNOD OF—Forbids markets on the **Lord's Day**, 119—Allows the sale of victuals after mass, 119—Enjoins attendance at church on the **Lord's days** and feasts, 179.

EYRE, JUSTICES IN, 57, 58—Different anciently from the justices of the courts at Westminster, 58 to 60—When made their circuits, 61—how often, 63, 397 to 404.

F.

FABIAN, ST.—Labour upon feast of, partially forbidden, 132—Who he was, 136—Feast abolished, 177, 186.

- FAIRS.**—See Lord's Day, I., 123.—Feasts, 123.
- FAITH, ST.**—Labour partially forbidden on day of, 131—Legends as to, 166—Her feast abolished, 177, 186—Morrow of, a Court day in the Arches Court, 383.
- FAITH, ST., WITH ST. HOPE AND ST. CHARITY,** Legends as to, 167.
- FASTS**—In Lent anciently, 13—In the Great Week, 14—Superposi-
tary, 15—Of the Four Seasons, 16—Stationary, 16—Vigils,
16—Legal proceedings forbidden on, 35, 36—Forbidden, when,
276, 277, 295, 299—General directions to keep, 345, et seq.—
Discouraged by Henry VIII., 350—by Cranmer, 350—En-
joined under plea of supporting the fisheries, 350, et seq.—Ob-
servance of any day appointed for, as a holiday, 378, 385, 394.
- FEASTS, CHRISTIAN**—Prohibition upon, of legal proceedings, 36—
of labour, 100—of secular works, 108—of exposition of wool,
123—of fairs, 123—against labourers taking wages for, 123—
Lists of those on which labour forbidden wholly, 127, 129,
130, 131, 135—partially, 128, 132—after mass, 133—Abolition
of several, 177, 186—Refusal to labour upon them punished,
180, 182, 186—Labour permitted on those retained, 186—Pro-
hibition upon, of sale of meat and drink during divine service,
184, 188—so of wares, 188—of attendance at games, 212, 214
—of eating before third hour of the day, 222—of songs and
games, 223—Attendance at church upon, enjoined, 304, 305,
306—Present state of the law and practice as to, 81, 306, 374
to 378.
- FEASTS, DOUBLE.**—See Double Feasts.
- FEASTS, ROMAN**—Legal proceedings upon, 6, 8—Labour upon,
what lawful, 87—Traffic allowed, 87—Joyous feelings con-
nected with, 208.
- FELIX, ST.**—Labour upon feast of, partially forbidden, 132—Le-
gends as to, 167—His feast abolished, 186.
- FERIÆ,** when the use of the name introduced, and to what it
applied, 376.
- FERRIES.**—See Lord's Day, II., 195.
- FIDES, ST.**—See Faith, St.
- FINE.**—See Lord's Day, III., 250.
- FISH**—Allowed in Lent, 313—Abstinence from, encouraged, 314—
Use of, enjoined at certain seasons at the Reformation, 351, et seq.
- FISH CARRIAGES.**—See Lord's Day, II., 198.
- FISHERMEN,** laws professedly for encouragement of, 350 to 364.

- FLESH**—Forbidden in Lent, 313—at all times of fasting, 345, 348, 351, 353, 357 to 363.
- FLORALIA**, what they were, 16.
- FLORIACUM**, where situate, 171.
- FOOD**.—See Lord's Day, II., 93—Taking any on a fast before dinner discountenanced, 347.
- FOUR SEASONS, FASTS OF**.—See Ember Weeks.
- FORESTS, PLEAS OF**, circuits for taking, 398, 399, 403.
- FRANCE**, custom in, of pardoning prisoners on Palm Sunday, 324.
- FRANCIS, ST.**—When he lived, 47—His feast directed to be observed, 129.
- FRIDAY**—Observed as a legal holiday, 23—Legal proceedings forbidden upon, 51—so marriages, 218—Fasts upon, suspended from Easter to Whitsuntide, 300—Prisoners to be visited upon, 342—Fasting enjoined upon, and why, 341, 342, 343—Exhortation to attendance at church upon, 344—Directed to be kept as a fish day at the Reformation, 351, 361.

G.

- GAMES**.—See Lord's Day, II., 212—Feasts, 212, 223.
- GANGRA, COUNCIL OF**—Prohibits fasting on the Lord's Day, 277—holding a church independent of the bishop, 281.
- GARGAN, MOUNT**, appearance of Archangel Michael upon, 43.
- GARTER, KNIGHTS OF**, allowed to keep the feast of St. George, 81, 187.
- GELASIUS, POPE**—Introduces feast of Purification, 40—Condemns the acts of St. George, 162.
- GEORGE II.**, law of, as to ferry boats, 196.
- GEORGE III., LAWS OF**—Allow fish carriages to travel on the Lord's day, 198—Restrict baking thereon, 199 to 202—Forbid capture of game upon it or Christmas Day, 203—the protesting bills on Good Friday, 204—debates on the Lord's Day, 232—Relax laws as to attendance at church, 294—Regulate the holidays at the excise, 378—the sittings of the common law courts in vacation, 379.
- GEORGE IV.**—**LAWS OF**—Allow boats to ply on the Lord's Day, 197—Establish ferries thereon, 197—Restrict baking thereon, 203—Repeat regulations of the holidays at the excise, 378—and the sittings of the common law courts in vacation, 379.

- GEORGE, ST.**—Injunctions to keep his day, 79—Labour upon it forbidden wholly, 130, 136—partially, 132—Legends as to, 162—His feast abolished except as to the Knights of the Garter, 81, 186—Observance of, subsequently, 370.
- GERUNDA, COUNCIL OF**, enjoins fasts at Pentecost and in November, 328.
- GOOD BEHAVIOUR**, warrant to find sureties for, see Lord's Day, III., 262.
- GOOD FRIDAY**—Time for absolving penitents, 15, 321—Labour upon it, forbidden, 131, 135—discouraged, 133—Laws as to bills payable upon, 204—Its observance enjoined, 319—Feasting upon, forbidden, 320—Preaching enjoined upon, 321—Prisoners pardoned, 322—Observance of, as a holiday, 371, 376, 377, 378—When excluded in computation of time, 389.
- GRAIN**, cases as to transport of, might be tried on festivals, 23.
- GRAND DAYS**, what so called, 79.
- GRAND JURY**, province of, 70, note.
- GRAVESEND**, law as to watermen plying there on the Lord's Day, 197.
- GREAT WEEK, THE**—What so called, 14—Duration and nature of the fasts upon it, 15—Legal business prohibited in, 18, 19, 25—How to be spent, 296—Communion on four days in it enjoined, 317—Truce of God originated in the observance of, 326.
- GREATER LITANY**—Legal proceedings forbidden upon day of, 25—Institution of, 26—Various names of, 27—Appearance of Archangel Michael upon, 27—Chorus of angels to the Virgin upon, 28—Observance of, enjoined, 336—forbidden, 337.
- GREGORY I.**—Institutes the greater litanies, 26—Encourages institution of wakes, 50—Discourages labour on the Lord's Day, but denounces its prohibition, 94—Allows bathing upon it, 94—Labour forbidden upon his day, 130, 131, 136—When his day kept, 161—His feast abolished, 186—Denounces the prohibition of labour on the Sabbath day, 299—Allows clergy to fast from Quinquagesima Sunday, 311—Exempts the Lord's Days from the Lent fast, 311—Forbids eggs, cheese or milk in Lent; allows fish, 313—Morrow of, a Court day in the Arches Court, 382.
- GRINDALL, ARCHBISHOP**—Injunctions by, as to observance of feasts, 188—of fish days, 356.
- GUNPOWDER PLOT.**—See November 5th.
- GUNTRAM, KING**—Forbids legal proceedings on the Lord's Day, 24—labour on festivals, 101.

H.

HACKNEY COACHES.—See Lord's Day, II., 194.

HARVEST.—Legal holidays upon, by Roman law, 7, 18—What considered as the time of, 61, note—Markets on Lord's Days and festivals allowed during, 121—Labour upon festivals allowed during, 183.

HELENA, EMPRESS, finding of the Cross by, 140.

HENRY II.—Laws as to legal vacations, 52—Message to, as to observance of Lord's Day, 114.

HENRY IV.—Law of, encourages archery on the Lord's Day, 224—forbids certain games, 224.

HENRY VI., law of, forbids fairs on feast days, 140.

HENRY VIII.—Abolition of holidays by, 177—Restores those of St. Luke, St. Mark, and St. Mary Magdalene, 178—Forbids certain popular customs on saints' days, 179—Has Thomas à Becket tried, his tomb confiscated and his name erased from the list of saints, 181—Forbids the observance of the abolished feasts, 182—of the greater litanies, 335—Orders all wakes to be kept on the same day, 340—Forbids keeping the day of the saint to whom a church dedicated, 177, 341—Allows the use of white meats in Lent, 348.

HERACLIUS, EMPEROR, legend as to his carrying the Cross, 143.

HIERARCHY, CELESTIAL, classification of, 43.

HILARY, ST.—Some account of, 55, note—Morrow of, a Court day in the Arches' Court, 381.

HILARY TERM, rule of, regulating holidays, 377.

HOLIDAYS.—See Feasts.—List of those kept in the law and public offices, 369, et seq. 377—Where not reckoned in the computation of time, 389 to 391, 393, 394—Where reckoned, 394.

HOLY THURSDAY.—See Ascension Day and Maundy Thursday.

HOLY WEEK.—See Great Week.

HOLY WELL, legends connected with, 172.

HONORIUS—Allows causes as to pirates and the transport of grain to be tried on festivals, 23—Orders prisoners to be visited on the Lord's Days, 282.

HORSE, purchase of, on the Lord's Day, when good, 268, 269.

HOURS, CANONICAL, OF PRAYER—What, 142—Antiquity of, 142.

HOUSEHOLD WORK, allowed on the Lord's Day, 93.

HUNDRED.—See Lord's Day, III., 193.

I.

- ICANHOC, ABBEY OF**, when founded and where, 382.
- ILERDA**.—See Lerida.
- INA, KING**, forbids labour on the Lord's Day, 103.
- INFORMATION**.—See Lord's Day, III., 243.
- INNOCENT I.**, enjoins fasting on the Sabbath Day, 297.
- INNOCENTS, THE HOLY**—Festival of, 12—Labour forbidden on it, 102, 127, 129, 130, 131, 135—allowed, 186—Certain customs forbidden on day of, 179.
- INQUEST**—What so called anciently, 65—Before whom taken, 68.
- INSOLVENT COURT**, sittings of, 380.
- ISLIP, ARCHBISHOP**—Prohibits labour or secular works on the Lord's Day, 120—Distinguishes the Sabbath from the Lord's Day, 125—Prohibits labour on saints' days, 133.
- ISTI SUNT DIES**, what Sunday so called, 62, note.

J.

- JAMES I.**—Permits certain games on the Lord's Day, 227—His answer to the lord mayor, 229—Laws of, enjoin attendance at church on the Lord's Day, 291—293—on the 5th of November, 301—Prohibit the killing of meat in Lent, 360—Proclamations by, against the use of flesh at certain seasons, 361, 362.
- JAMES, ST., THE GREATER**—Labour forbidden upon the day of, 128, 130, 135—allowed, 186.
- JAMES, ST., THE LESS**.—See Philip.
- JANUARY**, holidays on calends of, 19.
- JEROME, ST.**—Labour upon day of, partially forbidden, 152—When his day kept, 168—abolished, 177, 186.
- JEW OF TEWKSBURY**, anecdote as to, 117.
- JEWS**—Amusements of, on the Sabbath, 206—and other festivals, 206.
- JOHN, ST. AND ST. PAUL**—Labour upon day of, partly forbidden, 133—Day when kept, 171—Day abolished, 186.
- JOHN, ST.**—Labour forbidden, on day of, 102, 127, 129, 130, 131, 135—allowed, 186—Observance of his day as a holiday, 374.
- JOHN, ST., ANTE PORTAM LATINAM**—Labour forbidden upon day of, wholly, 128—partly, 132—What then commemorated and when kept, 154—Day abolished, 177, 186.

- JOHN, ST., THE BAPTIST, FEAST OF HIS NATIVITY**—Legal business prohibited, seven days before, 30—upon it, 38—When introduced, 46—Other feasts in honour of, 46—Return days calculated from, 55—Labour forbidden upon, 102, 127, 130, 131, 135—allowed, 186—Marriages forbidden during three weeks before, 217—Observance of, as a holiday, 372—Morrow of, a Court day at the Arches Court, 383.
- JOHN, ST., THE BAPTIST, FEAST OF HIS BEHEADING**—Labour forbidden upon, 130, 131—Abolished, 177, 186.
- JONA, BISHOP**, warning of, against secular affairs on the Lord's Day, 97.
- JOYFUL EVENTS**—Festivals in commemoration of, 12—See instances, 372, 374.
- JUDE, ST.**—See Simon.
- JUDGMENT.**—See Lord's Day, 82, 250.
- JUDGMENT, ARREST OF**, Lord's Day not counted as a day within which a motion for, must be made, 390.
- JUDGES.**—See Lord's Day, III., 281.
- JUDGE'S ORDER.**—See Process, 259.
- JURY**—Distinguished from inquest, 68, note—from assize, 84.
- JUSTICES IN EYRE.**—See Eyre.
- JUSTICES OF ASSIZE.**—See Assize.
- JUSTICES OF THE PEACE**, origin and nature of their authority, 73.
- JUSTICES SWORN**, who they were, 66.
- JUSTINIAN**—Legal holidays appointed by, 23—Law as to trials by bishops, 33—Forbids mechanical labour on the Lord's Day, 91—theatrical shows at certain seasons, 212, 215—Law as to releasing prisoners at Easter, 324—as to visiting prisoners on Wednesdays and Fridays, 342.

L.

- LABOURERS**, forbidden to take wages on festivals and vigils, 123.
- LABOUR on the Lord's Day.**—See Lord's Day.
- LAMMAS DAY**, what, 372.—See Peter, St., ad Vincula.
- LAODICÆA, COUNCIL OF**—Forbids marriages in Lent, 216—Directions of, as to keeping martyrs' festivals, 216—Forbids fasting on the Sabbath, 295—except in the Great Week, 296—Directions as to the Great Week, 296—Forbids fasting on the Lord's Day, even in Lent, 311—breaking the fast on Maundy Thursday, 319.

- LARGESSES** on the Lord's Day.—See Lord's Day, I., 98.
- LATERAN, V., COUNCIL OF**, enjoins fasts on the Sabbath day, 298.
- LAUD, ARCHBISHOP**, sanctions Book of Sports, 229.
- LAWRENCE, ST.**—Labour upon his day forbidden, 102, 128, 130, 132—Legends as to, 143—His feast abolished, 177, 186.
- LENT**—Not originally forty days, 13—Variety in time during which kept, 13, 310—When made to begin with Ash Wednesday, 14—Origin of name, 16—Criminal proceedings in, forbidden, 18—Pirates might be examined during, 22—Legal proceedings forbidden in, 25, 29, 30, 36, 38, 51—Dispensations for hearing causes in, 62—Law allowing causes to be heard in, 64—Marriages forbidden during, 216 to 218—except on the Lord's Day and Sabbath, 217—As to keeping martyrs' festivals during, 216, see p. 311—Prohibition during, of hunting, 221, 224—of games, 221—Fast to be continued forty days only, 310—except by clergy, 311—Variety in the way of fasting, 311—Eggs, cheese and milk forbidden, 313—Flesh forbidden, 313—Fish allowed, 313—Abstinence from eggs, cheese, fish and wine recommended, 314—Injunction to fast till vespers during, 315, 316—to give alms, 317—to communicate every Lord's Day, 317—every day, 318—Private meetings in, forbidden, 318—Processions in the beginning of it ordered, 318—Crime more severely punished during, 325—Was a season of forgiveness, 326—But war allowed in, see Addenda to page 326—Eating flesh during, see Flesh.
- LEO I., EMPEROR**—Forbids, on the Lord's Day, legal proceedings, 20—games, 215.
- LEO THE PHILOSOPHER**, forbids agricultural labour on the Lord's Day, 91.
- LEONARD, ST.**—Labour upon feast of, partially forbidden, 129, 132—Legends as to, 155—His feast abolished, 177, 186.
- LERIDA, COUNCIL OF**—When forbids marriages, 219.
- LESSONS, THE NINE**, what they were, 80.
- LEWIS, ST.**, custom of not working upon day of, forbidden, 180.
- LIBERTY**, trials as to, only before the higher courts, 57.
- LOCAL SAINTS**, Feasts in honour of, 11—Prohibition of legal proceedings upon days of, 29 to 31—Observance of, in England, 47, 48—Power of parish clergy to enjoin observance of, 47, 48—Abolished, 177, 186, 340.
- LONDON, COUNCIL OF**—Discourages labour on Good Friday, 133—Enjoins its observance, 319.

LONDON, FIRE OF, anniversary of, kept as a holiday, 373.

LORD MAYOR'S DAY, observance of, as a holiday, 374.

LORD'S DAY, I.—Prohibition upon it, of legal proceedings, 17 to 19, 24, 25, 29, 30, 36, 51—before clergy, 24—of service of writs, &c., 82—of business, 91, 97, 104, 105, 108—of mechanical works, 91—of rural works, 92 to 94, 98—of all work, 93, 97, 128, 129—of servile works, 98—of largesses, 98—of travelling, 103—of trading, 106 to 108—of public meetings, 108, 109, 241, note—of secular works, 108, 109, 120—of shaving, 118 to 121—of markets, 119, 121—of keeping shops open, 122—of selling shoes, 124, 189—of exposing wool for sale, 121—of fairs, 123, 189—of selling victuals or wares during divine service, 188—of carriers, drovers or waggoners travelling, 190, 192—of butchers killing or selling meat, 190, see 264—of all work done in a man's ordinary calling, 192—of sale of wares, 192—of baking bread, 199 to 201, 265, 266—of taking game, 203—of protesting bills for payment, 204—of opening public houses, 204—of driving carriages or cattle in certain places, 204—of elections, 204—of theatrical games, 212, 215, 220, 230—of hunting, 224—of debates, 232—of fasting, 276, 295, 311—of kneeling, 278.

II. Permission upon it, to bathe, 90—to labour, 90, 185—in harvest, 183—at rural works, 91, 95, 131—to prepare food, 93, 97, 196—to travel, 93, 97, 99—to do household works, 98—to give battle, 99—to do other necessary acts, 99—to hold fairs or markets in harvest, 121, 123—to take herrings or pilchards, 176—to cry milk, 193—for hackney coaches to ply, 194—to establish ferries, 195 to 197—to sell mackerel, 198—for fish carriages to travel, 198—to practise archery, 234—to have certain games, 225 to 229.

III. Early regard for, 8—Assizes held upon it, 69—Not observed by primitive Christians by a cessation from work, 86 to 89—Not considered as substituted for the Sabbath, 90—Servants to have leisure on it, 90—Prohibition of labour upon it denounced, 94—Worldly occupations discountenanced upon, 94, 96, 97—Travelling discouraged upon, 94, 97, 98, 104—Judgments upon persons labouring on it, 114—Anecdotes as to observance of, 116, 117—When considered to begin, 116, 120—Confused with the Sabbath, 121—Action against hundred for robbery of travellers taken away, 193, 246, see Addenda—Star Chamber might sit upon, 241—and Privy and Cabinet Councils may be held, 240—and Parliament sit, 241, 242—and the Court of Chancery be held, 242—and an original writ be tested, 243—and an information be exhibited in the Exchequer, 242—and a court sit for the purpose of adjourning, 244—Criminals ought

to be pursued upon, 245—Arrest lawful upon, at common law, 247—prohibited by statute, 255—Outlawries to be proclaimed upon, or published, 250—Fine, proclamation of, bad upon, 250, 264—Judgment given upon, bad, 250, 252—Course when any judicial act appointed to be done upon, 254—Service of process upon, a nullity, 257—what is process, see *Process*—Attachment for contempt of court may be enforced upon, 259—and prisoner be retaken, 260—unless escape voluntary, 261 and principal be taken by bail, 261—and warrant to find sureties for good behaviour be executed, 262—and citations of ecclesiastical court served, 262—but not proclaimed in church, 262—Contracts upon, good at common law, 263—Act of Charles extends to all business done in a man's ordinary calling, but not further, 265 to 268—Several acts upon the same day make one offence, 270—A van cannot run upon, 271—A stage coach may, 271—Attendance at church enjoined upon, 279, 283, 288, 289, 293—Provision for enforcing, 283, 290—Instruction directed to be given, 281—and judges and bishops directed to visit prisoners, 281, 282—Relaxation in the laws requiring attendance at church, 293 to 295—When excluded in the computation of time, 389, 391, 393, 394—when not, 391, 393, 394.

LUCIA, ST.—Prohibition upon her feast, of female labour, 129—of slighter servile works, 132—Legends as to her, 169—Her feast abolished, 177, 186.

LUCIAN, ST.—Who he was, 371—Observance of his day, 371.

LUKE, ST.—Labour on his feast forbidden, 128, 130, 131, 135, 178—allowed, 186—observance of, as a holiday, 373—Morrow of, a Court day in the Arches Court, 383.

LUNATICS, SECRETARY OF, holidays observed by, 376.

LYONS COUNCIL—Days which it directs to be kept as festivals, 102—Enjoins observance of fasts, 345.

M.

MACCABEES, festival in honour of, 12.

MACKEREL—See *Lord's Day*, II., 198.

MACON, II., COUNCIL OF—Forbids on the *Lord's Day* pleading, 24—labour, 94—Forbids labour in Easter week, 101—Enjoins attendance at church during it, 300.

MAMERCUS, BISHOP, institutes the days of Rogation, 29.

MANTUANUS, account by, of the change of vigils from feasts to fasts, 338.

- MARCION**—Denies the reality of the appearance of Christ, 277—Denounces the God of the Jews as a false God, 296.
- MARGARET, ST.**—Labour forbidden upon her feast to women, 129—generally, 131—Legends as to, 159—Why prayed to by women in child-birth, 159—Her feast abolished, 177, 186—Morrow of, a Court day in the Arches Court, 383.
- MARKETS**—Holding in the churches and church yards on the Lord's Day and other feasts, forbidden, 121—Allowed on these days in harvest, 121—after church, 188.
- MARK, ST.**—Labour upon his feast forbidden, 127, 130, 131, 135, 178—allowed, 186—Fasting upon it forbidden, 331—Observance of, as a holiday, 372—Morrow of, a Court day in the Arches Court, 382.
- MARRIAGES**—When forbidden, 216, 217, 219—Regulations as to times of, at the Reformation, 219.
- MARTIN, ST.**—Returns calculated from day of, 55—Labour upon his feast forbidden, 102, 128, 130—before mass, 133—Legends as to, 145—Why new wine and geese used on his day, 145—His feast abolished, 177, 186—Morrow of, a Court day in the Arches Court, 382.
- MARTYRS**—Variety of festivals of, in the ancient church, 11—Festival of all, 12, 48, 49.
- MARY MAGDALENE, ST.**—Labour upon feast of, forbidden, 128, 130, 131, 135—Her feast, when kept, 148—abolished at the Reformation, 184, 186.
- MASTERS AT COMMON LAW**, sat on a dies non juridicus, 244—Holidays kept by, 375.
- MASTERS IN CHANCERY**—Holidays kept by, 370—375—Nature of their office, 396.
- MATTHEW, ST.**—Labour forbidden upon his day, 127, 130, 135—allowed, 186—Observance of, as a holiday, 373.
- MATTHIAS, ST.**—Labour forbidden upon his day, 127, 130, 135—allowed, 186—Observance of, as a holiday, 372—Morrow of, a Court Day in the Arches Court, 382.
- MAUNDY THURSDAY**—Origin of the name, 15—Fast not to be broken upon it, 319, 320—Observance of, as a holiday, 370.
- MAURICE, ST.**—Who he was, 373—Observance of his day as a holiday, 373.
- MAYENCE, COUNCIL OF**—Forbids servile work on the Lord's Day, 98—Fixes the times of the Ember fasts, 331—Enjoins the observance of the greater Litanies, 330.

- MAY 29TH**, attendance at church enjoined upon, 301.
- MEDARD, COUNCIL OF**, forbids causes to be tried at certain seasons, 25.
- MEPHAM, ARCHBISHOP**—Enjoins abstinence from secular works on the Lord's Day, 126—the observance of Saints' days, 133, 306.
- MICHAEL, ST.**—Appearances of, 28, 44—Feasts of, 28, 42—Prohibition on his feast of legal proceedings, 29—of labour, 102, 128, 130, 131, 132, 135—Why specially honoured, 43—Return days calculated from his feast, 55—Labour allowed upon it, 186—Observance of it as a holiday, 373.
- MILITARY COURTS.**—See Court Martial.
- MILK.**—See Lord's Day, II., 193—Forbidden in Lent, 313.
- MISSI DOMINICI**, who they were, 98.
- MONKS**, fasts enjoined upon, 333.
- MORT D'AUNCESTOR**, assize of, when it lay, 83.
- MOTION**, notice, of Lord's Day not reckoned upon, 395.

N.

- NATALITIA**, what so called, 11.—See Local Saints.
- NATIVITY OF VIRGIN MARY**—Feast of, when kept, 39—introduced, 41—Vigil of, added, 42—Labour forbidden upon, 102, 135—abolished, 186—Observance of, as a holiday, 373.
- NAVARRÉ**, custom in, of pardoning prisoners at Christmas and Easter, 324.
- NICE, COUNCIL OF**, forbids kneeling on the Lord's Day, 278.
- NICHOLAS I., POPE**—Appoints legal holidays, 29—Allows on the Lord's Day bathing, 93—giving battle, and works of necessity, 99—Forbids labour on the Lord's Day and some other days, 102—marriages in Lent, 217—and games or hunting, 221—Discountenances amusements during festivals, 222—Allows war in Lent, Add. to 326—Enjoins fasts, in Pentecost, in August, and before Christmas, 329—and before the great feasts, 339—Allows flesh on Wednesdays, 343—Enjoins a fast on Friday, 343—General injunctions to fast, 345.
- NICHOLAS, ST.**—Labour forbidden upon his feast, 128, 131, 132, 135—Legends as to him, 144—His clerks, 145—His feast abolished, 177, 186—Certain customs upon it prohibited, 179.
- NINE LESSONS**, feasts of, why so called, 80.

NOTICES—What time not reckoned in, at Common Law, 386—in Chancery, 394.

NOVEL DISSEISIN, assize of, where it lay, 83.

NOVEMBER, 5TH OF—Observance of, as a holiday, 82, 372—Attendance at church enjoined upon, 301.

O.

ODIO ET ATIA, WRIT OF, what so called, 65.

ODO, ARCHBISHOP—Forbids secular works on the Lord's Day, or feast days, 108—Enjoins fasting in Lent, 315—on Fridays, 343—generally, 346.

OIL, miraculous, from the tomb of St. Nicholas, 145.

OLAUS, ST., OF SWEDEN, anecdote of, 117.

ORDINARY CALLING—See Lord's Day, III. 265.

ORLEANS I., COUNCIL OF, enjoins observance of the days of Rogations, 335.

ORLEANS III., COUNCIL OF—Forbids rural work on the Lord's Day, 93—Allows travelling and household work upon, 93—Directs Lent fast to be forty days only, 311.

ORLEANS, IV., COUNCIL OF—Enjoins fast on the Sabbath, 297—a forty days fast at Lent, 311—excepting on the Lord's Days, 311.

OSWALD, ST., ARCHBISHOP, DEPOSITION OF—Labour upon, forbidden, 127.—**TRANSLATION OF**—Labour upon, partly forbidden—Legends as to, in Addenda—Abolished, 186.

OSWALD, ST., KING, story of, 151, et seq.

OUTLAWRIES.—See Lord's Day, III., 250.

OXFORD, COUNCIL OF—Canon attributed to, allowing rural labour on the Lord's Day, 115—forbidding other labours on that day and other festivals, 131—appointing the times of the Ember fasts, 332.

P.

PALM SUNDAY, custom of releasing prisoners upon, 324.

PANTHEON—Consecration of, as a church, 49—Saxon account of, 49, note.

PARISH CHURCH—Attendance at, enjoined, 223, 287, 294—Power of Ecclesiastical Courts to enforce, 367.

PARLIAMENT.—See Lord's Day, III., 241.

- PATRON SAINT.**—See Church, feast of saint, to whom dedicated.
- PAUL, ST., CONVERSION OF.**—Labour forbidden upon day of, 127, 131, 135—Omission of notice of, at the Reformation, see 78, and Addenda to p. 184—Observed as a holiday, 371—Morrow of, a Court day at the Arches Court, 381.
- PENTECOST.**—Time for baptism, 10—Labour specially forbidden upon, 102, 176.
- PENTECOST, AND TWO DAYS FOLLOWING.**—Labour upon, forbidden, 127—allowed, 186—Observance of, as holidays, 371—Included in time when *ca. sa.* or *sci. f.*, must lie in the sheriff's office, 388.
- PENTECOST, AND THREE DAYS FOLLOWING.**—Labour upon, forbidden, 129, 130, 135—allowed, 186—Observance of, as holidays, 371.
- PENTECOST, AND WEEK FOLLOWING.**—Fast enjoined during, 329—Observance of, as holidays, 371.
- PERPETUA AND FELICITAS.**—Morrow of, a Court day in the Arches Court, 382—Legends as to, 382.
- PERSONALTY,** little importance of, in early Norman age, 57.
- PETER, BISHOP OF ALEXANDRIA,** enjoins fast on Wednesday and Friday, 341.
- PETER, ST., AD VINCULA.**—What feast so called, 66—Labour forbidden upon, 128, 131—Abolished, 177, 186—Why called Lammas Day, 372—Observance of, as a holiday, 372.
- PETER, ST., AND ST. PAUL.**—Labour forbidden upon the day of, 127, 130, 135—allowed, 186—Observance of, as a holiday, 372—Morrow of, a Court day at the Arches Court, 383.
- PETER, ST., B. EPULARUM,** what feast so called, 139.
- PETER, ST., CHAIR OF.**—See Chair of St. Peter.
- PETTY BAG OFFICE,** holidays kept at, 376.
- PHILIP, ST., AND ST. JAMES.**—Labour forbidden upon day of, 127, 130, 135—allowed, 186—observance of, as a holiday, 372.
- PIRATES,** allowed to be tried on festivals and in Lent, 22.
- PLEA AND PLEADING.**—See Process, 257—What time excluded in computation of rules for, 386, 390—Sunday, when included, 390.
- POPES.**—See Alexander; Clement; Gelasius; Gregory; Nicholas; Urban.
- PREROGATIVE COURT,** when sittings of held, 384.
- PRESCRIPTION,** no sanction to labour on the Lord's Day, 118.

PRISONERS—To be visited on the Lord's Day, 281—on Wednesday and Friday, 342—Custom of releasing at Easter, 323, 324—at Christmas, 325.

PRIVY COUNCIL.—See Lord's Day, III., 240—Sittings of the Judicial Committee of, 381.

PROCESS—Void if executed on the Lord's Day, 82, 257—A plea is process within the statute of Charles II., 256—and a declaration, 257—and a warrant to enforce a fine, 258—and an attachment to enforce a judge's order for payment of a sum of money, 259—or to enforce performance of an award, 259.—See Lord's Day, III., 259.

PROCLAMATION OF SOVEREIGN, day of, observed as a holiday, 375.

PUBLIC OFFICE, THE, holidays kept at, 370 to 375.

PURGATION, what it was, 110.

PURIFICATION, THE—Feast of, when instituted, 40—how called by the Greeks, 40—observed as a legal holiday, 79, 371—Labour forbidden upon, 102, 127, 130, 135—allowed, 186—Observance of, as a holiday, 371—Morrow of, a Court day at the Arches Court, 382.

Q.

QUINQUAGESIMA, period so called, 10.—See Easter to Pentecost.

R.

RECAPTURE.—See Lord's Day, III., 260.

RECORDS, KEEPER OF, AT THE TOWER, holidays observed by, 376.

RECORD OFFICE, THE, holidays kept at, 370 to 374.

REGINO, ABBOT—Inquiries as to attendance at church on the Lord's Day, 284—on other feasts, 304.

REGISTER AND REPORT OFFICES, holidays kept at, 370 to 374.

RHEIMS, COUNCIL OF—Forbids on the Lord's Day, causes to be tried, 25—servile work to be done, 98.

RICHARD, ST., OF CIRENCESTER, anecdote of, 117.

RICHARD II.—Law of, encourages archery on the Lord's Day, 224—forbids certain games, 224.

ROGATIONS, DAYS OF—Institution of, 29—Prohibition upon, of legal proceedings, 25, 30—of labour, 101, 102—of games and banquets, 223—Fasting enjoined upon, 335, 336.

- ROLLS, included as bread in statute of Charles II., 270.
 ROLLS, SECRETARIES TO, holidays kept by, 370 to 374.
 ROME, holiday on foundation day of, 18.
 ROMAN COURTS, sat beyond Septuagesima Sunday, 30.
 ROMAN HOLIDAYS—Number of, 6—diminished by Augustus, 6—
 Exemption from legal business upon, how far it extended, 6—
 None in military matters, 7—Labour upon, how far forbidden,
 87—Traffic allowed, 88—and amusements, 206.
 ROUEN, COUNCIL OF—Enjoins attendance at church on the Lord's
 Day, 283—on other feasts, 304—Provision for enforcing, 283.
 RUBIGALIA, when kept, 16.

S.

- SABBATH DAY—Early observance of, 9—Abstinence from labour
 upon it forbidden, 88, 299—Servants to be at leisure upon,
 90—Marriages allowed to be celebrated upon, in Lent, 218—
 and feasts of martyrs, 218—Attendance at church enjoined
 upon, 288—Fasting on, forbidden in the East, 295—except in
 the Great Week, 296—enjoined in the West, 297—Customary
 to communicate upon it, 298—Included among fish days at the
 Reformation, 344, 351.
 SAINTS DAYS.—See Feasts.
 SARDICA, COUNCIL OF, enjoins attendance at church on the Lord's
 Day, 279.
 SAXONS, ANGLO, canon of, as to fasting in Lent, 314, 317.
 SCI. FA.—What, 391—What days excluded from the time during
 which it must lie in the sheriff's office, 388, 390.
 SCOLASTICA, ST.—Morrow of, a Court day in the Court of Arches,
 382—Legend as to, 382.
 SEBASTIAN, ST.—See Fabian.
 SELIGENSTADT, COUNCIL OF—Forbids marriages at certain
 seasons, 216—Fixes the time of the Ember fasts, 331.
 SEPTUAGESIMA SUNDAY TO EASTER—Legal proceedings during,
 forbidden, 25, 38—allowed, 64—Marriages forbidden during,
 217.
 SERMON, leaving church during it, forbidden, 279, 285.
 SERVANT, hire of, on the Lord's Day, good, 268.
 SHAVING.—See Lord's Day, I., 118.

- SHERIFF**—Civil jurisdiction of, in early Norman reigns, 56, and 57
note—Criminal jurisdiction of, 56.
- SHOES and SHOPS**.—See Lord's Day, I., 124, 118.
- SHROVE TUESDAY**, observance of, as a holiday, 370.
- SIMON, ST. AND ST. JUDE**—Labour forbidden upon day of, 128,
130, 135—allowed, 186—Observance of, as a holiday, 373—
Morrow of, a Court day at the Arches Court, 383.
- SIX CLERKS**.—See Writs and Records.
- SLAVE**, whose master gave him food in a time of fasting to become
free, 346.
- SOUTH SEA HOUSE**, holidays kept at, 370 to 374, 378.
- SPORTS, BOOK OF**—Cause of its publication, 225—Opposition to,
228—Republication of, 229—Burnt by the hangman, 230.
- STAMP OFFICE**, holidays kept at, 377.
- STAR CHAMBER, COURT OF**.—See Lord's Day, III., 241.
- STEPHEN, ST.**—Labour upon day of, forbidden, 102, 127, 130,
135—allowed, 186—Observance of, as a holiday, 374.
- SWITHIN, ST.**—Who, 47—Story of rain on his translation, 47—
Observance of his day as a holiday, 372—Morrow of, a Court
day at the Arches Court, 383.
- SYLVESTER, ST.**—Legal proceedings forbidden on day of, 77—
Labour forbidden, 131—His feast abolished, 186—Observance
of, as a holiday, 374, 376—Account of him, 376.
- SYNODS**.—See Exeter; Worcester; York.

T.

- TARRAGONA, COUNCIL OF**, forbids clergy to try causes on the
Lord's Day, 23.
- TERMS**—English, 53—Scotch, 54—Ecclesiastical, 54—Trinity
shortened under Henry VIII., 74—Michaelmas Term under
Charles I. and George II., 75—Times of, fixed, 75, 83—Saints'
days falling in, how observed, 77—79.
- THANKSGIVING**, observance of any day appointed for, as a holi-
day, 378, 385.
- THEATRICAL SHOWS**—Forbidden on Sundays, 212, 214—seven
days before and after Easter, 212—on other feasts, 212—from
Easter to eight days after Pentecost, 213.
- THEFT**, more severely punished in holy seasons, 105.

- THEODOSIUS I.**—Rearranges the judicial holidays, 18—Prohibits games on certain feasts, 212.
- THEODOSIUS II.**, forbids theatrical shows from Easter to eight days after Pentecost, 213.
- THEODULPHUS, BISHOP OF ORLEANS**—Forbids legal proceedings on the Lord's Day and in Lent, 25—Enjoins the suspension of work on the Lord's Day, 97—Forbids early banquetings on great festivals, 223—Enjoins attendance at church on the Lord's Day, 283—observance of Easter Week, 301—during Lent, fasting till vespers, 315, 316—almsgiving, 317—communicating, every Lord's Day, 317—and on four days in Easter Week, 317.
- THOMAS, ST.**—Labour upon his day forbidden, 128, 130, 135—allowed, 186—observance of, as a holiday, 374.
- THOMAS, ST. ARCHBISHOP, MARTYRDOM AND TRANSLATION**—Labour forbidden upon, 127, 130, 131, 135—when his translation took place, 150—Mock trial of, 180—The keeping his day forbidden, 181—Morrow of Translation, a Court day at the Arches Court, 383.
- THORESBY, ARCHBISHOP**, forbids markets in the churches and church yards on festivals, 121.
- THORNEY, ABBEY OF**—Where, 383—Possessed half St. Botolph's body, 383.
- TOLEDO, IV., COUNCIL OF**—Forbids use of flesh in Lent, 313—feasting on Good Friday, 321—Enjoins preaching thereon, 321.
- TOLEDO, V., COUNCIL OF**, appoints litanies in December, 329.
- TOURS, COUNCIL OF.**—See Monks.
- TOURS, III., COUNCIL OF**, enjoins attendance at church on the Lord's Day, 283.
- TRADING.**—See Lord's Day, I., 106.
- TRIAL**, acceptance of short notice of, does not affect rule as to vacation, 386.
- TRIBURY, COUNCIL OF**, forbids legal proceedings at certain seasons, 30.
- TRUCE OF GOD**, what it was and origin of, 327.
- TRULLO, COUNCIL IN**—Recognizes the feast of the Annunciation, 40—Forbids games in Easter Week, 215—Enjoins attendance at church thereon, 215—Forbids kneeling on the Lord's Day, 278—Enjoins attendance at church thereon, 279—and instruc-

tion to be given, 281—Forbids fasting on the Saturday, 297—fast to be broken on Maundy Thursday, 320.

TUMBA, MOUNT, appearance of the Archangel Michael upon, 45.

U.

ἸΠΠΑΣΤΗ, what festival so called, 40.

URBAN VIII., institutes the feast of Corpus Christi, 140.

UTRUM, ASSIZE OF, what it lay for, 82.

V.

VACATIONS, LEGAL—What cases might be tried in, by Civil Law, 6, 19, 21—by Canon Law, 21—Periods fixed as, by that law, 25, 29, 30, 77—in England, 36, 37, 38, 51, 52, 61, 64, 82, 379 to 387, 392—Cases as to, 387, 389, 393—Computation of, 392.

VALENTINE, ST.—Observance of his day as a holiday, 372—Legends as to, Addenda—Morrow of, a Court day at the Arches Court, 382.

VALENTINIAN I., forbids legal proceedings on the Lord's Day, 17.

VALENTINIAN I. & II., laws of, as to pardoning prisoners on Good Friday, 322.

VESPERS, festivals considered to begin from, in the Canon Law, 108, 116, 120.

VICTORIA, LAWS OF—Require public houses to be closed in the mornings of the Lord's Day, and other days, 205—Regulate thoroughfares during the time of divine service thereon, 205—Repeal laws requiring attendance at church, 294—Enable the Law Courts to set in Banc in vacation, 378.

VICTUALS, SALE OF.—See Lord's Day, I., 188.

VIGILS—In early times, 16—Prohibition of legal business upon, 38, 51—Change from feast to fast, 50, 338—Saxon account of their origin, 50—Prohibition to labourers to take wages upon, 123—to women to attend, 337—against holding them in churches, 338—Observance of fast upon, enjoined, 338—Retained at the Reformation, 340.

VINALIA, what feast so called, 16.

VINCENT, ST.—Labour forbidden partially upon his day, 128—Legends as to, 154—His feast abolished, 186.

VIRGIN MARY—See Annunciation; Assumption; Conception; Nativity; Purification.—Chorus of angels in honour of, 28, 41—Legal business forbidden on feasts of, 38, 39—Dates of their introduction, 39—Labour forbidden upon them, 130, 131—Attendance at church enjoined, 305.

VOLUNTARY ESCAPE.—See Lord's Day, III., 261.

W.

WAGGONER OR WAINMAN, exercise of vocation by, on the Lord's Day, forbidden, 190.

WAKES—Institution of, 50—To be kept on one day of the year only, 340—Ordered to be kept, 340.

WARHAM, ARCHBISHOP—Forbids the holding markets in churchyards on festivals, 121—Presents butchers and barbers for exercising their vocation on the Lord's Day, 123.

WARRANTS.—See Process, 258.

WEDNESDAY—Kept as a fast, 16—Marriages forbidden upon, 218—Fast upon, suspended from Easter to Pentecost, 300—enjoined, and why, 341—Prisoners to be visited upon, 342—Superseded as a day of fasting by Saturday, 343—Included among fish days at the Reformation, 344 to 351—Exhortation to attend at church upon, 344.

WHITE MEATS, allowed in Lent, 348.

WHITGIFT, ARCHBISHOP, enjoins fasting on Wednesday and Friday, 358.

WHITSUNDAY.—See Pentecost.—Why so called, 10.

WILLIAM LE MAIRE OF ANGERS, forbids shaving and grinding corn on the Lord's Day, 118.

WILLIAM I., confirms law of Edward the Confessor as to legal proceedings in holy seasons, 51.

WILLIAM III., LAWS OF—Allow hackney coaches to ply on the Lord's Day, 194.—Establish ferries thereon, 195—Permit the sale of mackerel, 198—Relax the laws enforcing attendance at church, 293—The day of his landing observed as a holiday, 374.

WILLIAM IV., LAWS OF—Regulate holidays of the courts of law, 82, 377—Allow hackney coaches to ply on the Lord's Day, 195, note—Forbid baking thereon, 202—and the capture of game, 203—the protesting bills, on that and other days, 204—the holding elections or public meetings on the Lord's Day, 204—Regulate holidays at the Customs and Exchequer, 378.

WINE, abstinence from, in Lent, encouraged, 315.

WINIFRED, ST.—Labour upon feast of, forbidden, 136—Legends as to, 173—Feast abolished, 177, 186.

WITNESS, examination of, *de bene esse*, Lord's Day reckoned in notice of, 395.

WOMEN—Forbidden to labour on certain days, 129—or to attend vigils, 337.

WOOL.—See Lord's Day, I., 121.

WORCESTER, SYNOD OF, list of days on which it prohibits labour, 128.

WRIT, service of, on the Lord's Day, void, 82, 257.

WRITS AND RECORDS, OFFICE OF, the holidays kept by, 370 to 374.

WULFSTAN, ST., DEPOSITION OF—Labour forbidden upon the day of, 127—Legends as to, 148—His feast abolished, 186—Morrow of, a Court day in the Court of Arches, 381.

Y.

YORK, SYNOD OF, distinguishes between the Sabbath and the Lord's Day, 125.

LONDON :

C. ROWORTH AND SONS, PRINTERS,
BELL YARD, TEMPLE BAR.

50, ALBEMARLE STREET, LONDON.

February, 1845.

MR. MURRAY'S

List of Works in General Literature:

CONSISTING OF

| | |
|-----------------------------|------------------------------------|
| HISTORY. | SPORTING. |
| BIOGRAPHY. | NATURAL HISTORY. |
| RELIGION. | AGRICULTURE. |
| POETRY. | RURAL AND DOMESTIC ECONOMY. |
| VOYAGES AND TRAVELS. | BOOKS FOR YOUNG PERSONS. |
| ART AND SCIENCE. | CLASSICAL AND SCHOOL-BOOKS. |
| GENERAL LITERATURE. | |

HAND-BOOKS FOR TRAVELLERS,

AND

THE HOME AND COLONIAL LIBRARY.

The following Periodicals are published by MR. MURRAY.

QUARTERLY REVIEW. 8vo, 6s.

ROYAL NAVY LIST (*Published Quarterly by Authority*). 12mo, 2s.

NAUTICAL ALMANAC (*Published by Authority*). Royal 8vo, 5s.

HART'S ARMY LIST (*Published Quarterly*). 8vo, 5s.

HART'S ANNUAL ARMY LIST. 8vo, 20s.

ROYAL AGRICULTURAL JOURNAL. 8vo, 5s.

ROYAL GEOGRAPHICAL JOURNAL. 8vo, 3s. 6d.

COLONIAL AND HOME LIBRARY, *published Monthly*. Post 8vo, 2s. 6d.

VALUABLE AND STANDARD WORKS,

PUBLISHED BY

MR. MURRAY, ALBEMARLE STREET, LONDON.

History.

THE MARLBOROUGH LETTERS AND DESPATCHES,
FROM 1702 TO 1712, RECENTLY DISCOVERED AT WOODSTOCK.
Edited by SIR GEORGE MURRAY. Vols. 1 to 3, 8vo, 20s. each.

EUROPE DURING THE MIDDLE AGES.
By HENRY HALLAM, Esq. *Eighth Edition.* 2 vols. 8vo, 24s.

HISTORY OF ENGLAND,
FROM THE ACCESSION OF HENRY VII. TO THE DEATH OF GEORGE II.
By HENRY HALLAM, Esq. *Fifth Edition.* 2 vols. 8vo, 24s.

THE POPES OF ROME :
THEIR POLITICAL AND ECCLESIASTICAL HISTORY DURING THE 16TH
AND 17TH CENTURIES. From the German of LEOPOLD RANKE.
Translated by SARAH AUSTIN. *Second Edition.* 3 vols. 8vo, 36s.

HISTORY OF INDIA,
By HON. MOUNTSTUART ELPHINSTONE. THE HINDOO AND MAHOMEDAN PERIODS. *Second Edition.* Map. 2 vols. 8vo, 30s.

THE ANCIENT EGYPTIANS :
THEIR PRIVATE LIFE, MANNERS, AND CUSTOMS. Derived from
the Study of Hieroglyphics, Sculpture, and Paintings, still existing,
compared with Ancient Authors. By SIR GARDNER WILKINSON.
Second Edition. With 600 Illustrations. 6 vols. 8vo, 6l. 6s.

SPAIN UNDER CHARLES THE SECOND.
Or, Extracts from the Correspondence of the HON. ALEXANDER
STANHOPE, British Minister at Madrid from 1690 to 1699.
By LORD MAHON, M.P. *Second Edition Enlarged.* Post 8vo, 6s. 6d.

HISTORY OF ENGLAND,
FROM THE PEACE OF UTRECHT (1713) TO THE PEACE OF PARIS
(1763). By LORD MAHON, M.P. *Second Edition*, 8vo. Vols. 1 to 3, 36s.
Vol. 4, 16s.

HISTORY OF CHRISTIANITY :
From the Birth of Christ to the Extinction of Paganism in the
Roman Empire. By the Rev. H. H. MILLMAN. 3 vols. 8vo, 36s.

Biography.

- LIFE OF LORD BYRON,**
WITH HIS LETTERS AND JOURNALS. By THOMAS MOORE, Esq.
New Edition. Portraits. Royal 8vo, 15s.
- LIFE OF CRABBE, THE POET ;**
WITH HIS LETTERS AND JOURNALS. By HIS SON. *New Edition.*
Fcap. 8vo, 6s., or with Plates, 7s. 6d.
- LIFE OF SIR SAMUEL ROMILLY,**
WRITTEN BY HIMSELF ; WITH HIS LETTERS AND POLITICAL DIARY.
EDITED BY HIS SONS. *Third Edition.* Portrait. 2 vols. fcap 8vo, 12s.
- LIFE OF EDWARD GIBBON ;**
WITH SELECTIONS FROM HIS CORRESPONDENCE, AND NOTES.
By Rev. H. H. MILMAN. Portrait. 8vo, 9s.
- LIFE OF LORD HILL,**
COMMANDER OF THE FORCES. From authentic documents supplied
by his Family and Friends. By Rev. EDWIN SIDNEY. 8vo.
- LIFE OF SIR DAVID WILKIE ;**
With his Letters, Journals, and Critical Remarks on Works of Art,
during his Tours in France, the Netherlands, Italy, Spain, Germany,
Turkey, Egypt, and the Holy Land. By ALLAN CUNNINGHAM, Esq.
Portrait. 3 vols. 8vo, 42s.
- LIFE OF LORD CHANCELLOR ELDON,**
WITH HIS OWN CORRESPONDENCE, AND SELECTIONS FROM HIS
ANECDOTE BOOK. By HORACE TWISS, Esq. *Second Edition.*
Portraits. 3 vols. 8vo, 42s.
- LIFE OF ROBERT BURNS.**
By JOHN GIBSON LOCKHART, Esq. *Fourth Edition.* Portrait.
Fcap. 8vo, 6s. 6d.
- MEMOIRS OF NAVAL WORTHIES**
DURING QUEEN ELIZABETH'S REIGN, with their Achievements,
Adventures, and Discoveries. By JOHN BARROW, Esq. 8vo.
- LIFE OF BELISARIUS.**
By LORD MAHON, M.P. Map. 8vo, 12s.
- MEMOIR OF WILLIAM SMITH,**
THE GEOLOGIST, Author of the MAP OF THE STRATA ON ENGLAND
AND WALES. By his Nephew and Pupil JOHN PHILLIPS, F.G.S.
With Portraits and Woodcuts, 8vo, 7s. 6d.
- MEMOIR OF LORD SYDENHAM,**
WITH HIS ADMINISTRATION IN CANADA, AND CORRESPONDENCE.
By G. POULETT SCROPE, M.P. *Second Edition.* Post 8vo, 9s. 6d.

Religion.

THE BOOK OF COMMON PRAYER.

With Illustrations, Illuminations, Initials, Borders, Vignettes, &c., printed in colours by OWEN JONES, Architect. And useful and instructive Notes, by a careful Editor. 8vo. *Nearly Ready.*

The Historical Illustrations are selected from the Works of the Pure Artists of the early Italian and German Schools.

THE BOOK OF THE CHURCH.

With Notes, containing References to the Authorities, and an Index. By ROBERT SOUTHEY, LL.D. *Fifth Edition.* 8vo, 12s.

CATHOLIC SAFEGUARDS

AGAINST THE ERRORS, CORRUPTIONS, AND NOVELTIES OF THE CHURCH OF ROME. Selected from Eminent Divines of the Church of England. By JAMES BROGDEN, M.A. 5 vols. 8vo. *Just Ready.*

ILLUSTRATIONS OF THE LITURGY AND RITUAL

OF THE CHURCH OF ENGLAND. Being Sermons and Discourses selected from eminent Divines of the Seventeenth Century. By JAMES BROGDEN, M.A. 3 vols. post 8vo, 27s.

DIALOGUES ON THE EVIDENCES OF CHRISTIANITY,

BETWEEN A BRAHMIN AND A CHRISTIAN. By WILLIAM SEWELL, B.D., of Exeter College, Oxford. Fcap. 8vo, 7s. 6d.

ON THE UNITY OF THE CHURCH.

By HENRY EDWARD MANNING, M.A., Archdeacon of Chichester. *Second Edition.* 8vo, 10s. 6d.

PARISH SERMONS ;

On the Lessons, the Gospel, or the Epistle, for every Sunday and Principal Festival in the Year. By BISHOP HEBER. *Fifth Edition.* 2 vols, post 8vo, 16s.

HYMNS FOR THE CHURCH SERVICE.

Adapted for every Sunday in the Year. By the late BISHOP HEBER. *Eleventh Edition.* 16mo, 2s.

PSALMS AND HYMNS FOR PUBLIC WORSHIP,

Selected and Arranged, and Adapted to the various Solemnities of the Church. By W. B. HOLLAND, M.A., Perpetual Curate of Walmer. 24mo, cloth. Price 1s. 6d.

AN EXPLANATION OF THE SACRAMENTS,

And the occasional Rites and Ceremonies of the Church of England. By A LADY. Fcap 8vo, 5s. 6d.

HISTORY OF JOSIAH.

By the Author of "GIDEON, THE MIGHTY MAN OF VALOUR." Fcap. 8vo, 4s. 6d.

Poetry.

LORD BYRON'S LIFE AND WORKS. (LIBRARY EDITION.)
With Portrait and numerous Plates. 17 vols., Fcap. 8vo, 5s. each.

LORD BYRON'S POEMS. (TRAVELLING EDITION.)
With Portrait and View of Newstead Abbey. *New Edition.*
One volume. Royal 8vo, 15s.

LORD BYRON'S TALES. (POCKET EDITION.)

- | | |
|----------------------|--------------------------|
| 1. GIAOUR. | 6. BEPPO. |
| 2. BRIDE OF ABYDOS. | 7. MAZEPPA. |
| 3. CORSAIR. | 8. ISLAND. |
| 4. LARA. | 9. PARISINA. |
| 5. SIEGE OF CORINTH. | 10. PRISONER OF CHILLON. |

2 vols. 24mo, 5s.; or separately 6d. each.

LORD BYRON'S DRAMAS. (POCKET EDITION.)

- | | |
|----------------------|--------------------------|
| 1. MANFRED. | 5. TWO FOSCARI. |
| 2. MARINO FALIERO. | 6. DEFORMED TRANSFORMED. |
| 3. HEAVEN AND EARTH. | 7. CAIN. |
| 4. SARDANAPALUS. | 8. WERNER. |

2 vols. 24mo, 7s.; or separately at 6d. and 1s. each.

LORD BYRON'S CHILDE HAROLD. (POCKET EDITION.)

With Engraved Title-page. 24mo, 2s. 6d.

ANCIENT SPANISH BALLADS;

HISTORICAL AND ROMANTIC. Translated. By J. G. LOCKHART, Esq.
With Illuminated Titles, Coloured Borders, Vignettes, &c. *Third Edition.* 4to, 2l. 2s.

REV. GEORGE CRABBE'S POETICAL WORKS.

With his Life, Letters, and Journals. By his SON. With Plates.
8 vols. fcap 8vo, 40s.

BEAUTIES OF THE BRITISH POETS;

WITH BIOGRAPHICAL NOTICES. By THOMAS CAMPBELL, Esq.
New and Revised Edition. Portrait and Vignette. Royal 8vo, 15s.

BISHOP HEBER'S POETICAL WORKS.

CONTAINING PALESTINE, EUROPE, THE RED SEA, AND OTHER
POEMS. *Third Edition.* Portrait. Fcap. 8vo, 7s. 6d.

REV. H. H. MILMAN'S POETICAL WORKS.

CONTAINING FALL OF JERUSALEM, BELSHAZZAR, MARTYR OF AN-
TIOCH, SAMOR, AND OTHER POEMS. *Second Edition.*
With Notes and Illustrations. 3 vols. Fcap 8vo, 18s.

REJECTED ADDRESSES.

By JAMES and HORACE SMITH. With Notes by the Authors.
Twentieth Edition. Portraits. Fcap. 8vo, 6s. 6d.

DIBDIN'S POPULAR SEA SONGS.

With Illustrations by GEORGE CRUIKSHANK. *Second Edition.*
Fcap. 8vo, 5s.

Popular Travels.

I.

JOURNAL OF AN AFFGHAN PRISONER.

With a Narrative of the Military Operations at Cabul. By Lieut. VINCENT EYRE. *Seventh Thousand*. With a Plan. Post 8vo, 12s.

II.

A JOURNAL OF THE DISASTERS IN AFFGHANISTAN.

By LADY SALE. *Eighth Thousand*. With Plan. Post 8vo, 12s.

III.

FIFTY DAYS ON BOARD A SLAVE-SHIP.

By Rev. PASCOE GRENFELL HILL, Chaplain of H.M.S. *Cleopatra*. With a Map. Fcap 8vo, 3s. 6d.

IV.

LETTERS FROM MADRAS;

OR, FIRST IMPRESSIONS OF MANNERS AND SOCIETY IN INDIA, DURING A THREE YEARS' RESIDENCE. By A LADY. Post 8vo, 9s. 6d.

V.

A JOURNEY THROUGH ARABIA PETRÆA,

MOUNT SINAI, TO THE EXCAVATED CITY OF PETRA, THE EDMOM OF THE PROPHECIES. By M. LEON DE LABORDE. *Second Edition*. Plates. 8vo, 18s.

VI.

BIBLICAL RESEARCHES IN PALESTINE,

MOUNT SINAI, and ARABIA PETRÆA, undertaken in reference to Biblical Geography by EDWARD ROBINSON, D.D. With new Maps and Plans. 3 vols. 8vo, 2l. 5s.

VII.

NESTORIAN CHRISTIANS, OR LOST TRIBES;

THEIR MANNERS, CUSTOMS, AND CEREMONIES. With Evidence of their Identity, and Illustrations of Scripture Prophecy. By ASAHEL GRANT, M.D. *Third Edition*. Map. Fcap. 8vo, 6s.

VIII.

A SECOND VISIT TO YUCATAN

AND THE RUINED CITIES OF CENTRAL AMERICA. By J. L. STEPHENS, Esq. With 120 Engravings. 2 vols. 8vo, 42s.

IX.

EXCURSION THROUGH THE SLAVE STATES;

FROM WASHINGTON ON THE POTOMAC, TO THE FRONTIERS OF AMERICA. By G. W. FEATHERSTONHAUGH, Esq., 2 vols. 8vo, 26s.

X.

TEXAS AND THE GULF OF MEXICO.

By Mrs. HOUSTON. With Illustrations. 2 vols. post 8vo, 21s.

XI.

JOURNAL OF TRAVELS IN NORTH AMERICA;

With Geological Observations on the United States, Canada, and Nova Scotia. By CHARLES LYLELL, Esq., F.G.S. With Illustrations. Post 8vo.

XII.

LETTERS FROM CANADA AND THE UNITED STATES;

By JOHN ROBERT GODLEY, Esq. 2 vols. post 8vo. 16s.

XIII.

TRAVELS IN NEW ZEALAND:

With Contributions to the Geography, Geology, Botany, and Natural History of the Islands. By ERNEST DIEFFENBACH, M.D., Naturalist to the New Zealand Company. With Plates. 2 vols. 8vo, 24s.

XIV.

FOREST SCENES AND INCIDENTS IN CANADA.

By Sir GEORGE HEAD. *Second Edition.* Post 8vo, 10s.

XV.

A BACKWOODSMAN'S ACCOUNT OF UPPER CANADA;

FOR THE USE OF EMIGRANTS. *Third Edition.* Fcap 8vo, 1s. 6d.

XVI.

RAPID JOURNEYS ACROSS THE PAMPAS.

By Sir FRANCIS B. HEAD, Bart. *Third Edition.* Post 8vo, 9s. 6d.

XVII.

THE IONIAN ISLANDS, ATHENS, AND THE MOREA.

By EDWARD GIFFARD, Esq. With Views. Post 8vo, 12s.

XVIII.

JAPAN IN THE NINETEENTH CENTURY.

Described from Recent Dutch Travellers. Post 8vo, 9s. 6d.

XIX.

EXCURSIONS IN NEWFOUNDLAND:

With an Account of the Cod Fishery—Fog Banks—Sealing Expeditions, &c. By J. B. JUKES, Esq., Geological Surveyor of Newfoundland. With a Map. 2 vols. Post 8vo, 21s.

XX.

BUBBLES FROM THE BRUNNEN OF NASSAU.

By Sir FRANCIS B. HEAD, Bart. *Sixth Edition.* 16mo, 5s.

XXI.

ENGLAND, SCOTLAND, AND IRELAND,

THE CHANNEL ISLANDS, AND THE ISLE OF MAN. By Sir GEORGE HEAD. *Third Edition.* 2 vols. post 8vo, 12s.

Art, Science, and General Literature.

—♦—

THE ANATOMY AND PHILOSOPHY OF EXPRESSION,
AS CONNECTED WITH THE FINE ARTS. By SIR CHARLES BELL.
Third Edition. With Plates and Woodcuts. Royal 8vo, 21s.

HAND-BOOK TO THE PUBLIC GALLERIES OF ART,
With Catalogues of the Pictures, and Critical, Historical, and Biographical Notices. By MRS. JAMESON. Post 8vo.

THE CONNEXION OF THE PHYSICAL SCIENCES.
By MARY SOMERVILLE. *Sixth Edition.* Fcap. 8vo, 10s. 6d.

CHEMICAL MANIPULATION ;
Being Instructions to Students in Chemistry, on the Methods of performing Experiments of Demonstration or Research, with accuracy and success. By MICHAEL FARADAY, F.R.S. *Third Edition.* 8vo, 18s.

FACTS TO ASSIST THE MEMORY IN VARIOUS SCIENCES.
Second Edition. Fcap 8vo, 6s. 6d.

LITERARY HISTORY OF EUROPE,
DURING THE 15TH, 16TH, AND 17TH CENTURIES. By HENRY HALLAM, Esq. *Second Edition.* 3 vols. 8vo, 36s.

THE SANATIVE INFLUENCE OF CLIMATE.
WITH AN ACCOUNT OF THE BEST PLACES OF RESORT FOR INVALIDS IN ENGLAND, SOUTH OF EUROPE, &c. By SIR JAMES CLARK, Bart., M.D. *Third Edition.* Post 8vo, 10s. 6d.

HAWKSTONE ;
A TALE OF AND FOR ENGLAND IN THE YEAR 184—. 2 vols. fcap. 8vo, 12s.

THE INTELLECTUAL POWERS,
AND THE INVESTIGATION OF TRUTH. By JOHN ABERCROMBIE, M.D. *Tenth Edition.* Post 8vo, price 8s. 6d.

THE PHILOSOPHY OF THE MORAL FEELINGS.
By JOHN ABERCROMBIE, M.D. *Sixth Edition.* Fcap 8vo, 5s.

RESULTS OF READING.
By J. STANFORD CALDWELL, M.A., Barrister-at-Law. 8vo, 10s. 6d.

THE CONDUCT OF LIFE,
By GEORGE LONG, Esq., Author of "Moral Nature of Man." Post 8vo, 6s.

Sporting.

THE CHASE—THE TURF—AND THE ROAD.

By NIMROD. *Second Edition.* Plates by ALKEN and GILBERT.
Post 8vo, 9s. 6d.

ART OF DEER-STALKING.

ILLUSTRATED BY A FEW DAYS' SPORT IN THE FOREST OF ATHOLL.
By WILLIAM SCROPE, F.L.S. With Plates by the LANDSEERS.
Second Edition. Royal 8vo, 2l. 2s.

DAYS AND NIGHTS OF SALMON FISHING.

With a short Account of the Natural History and Habits of the Salmon. By WILLIAM SCROPE, F.L.S. With Illustrations by WILKIE, LANDSEER, SIMSON, and COOKE. Royal 8vo, 2l. 2s.

MAXIMS AND HINTS ON ANGLING,

CHESS, SHOOTING, AND OTHER MATTERS. By RICHARD PENN, F.R.S.
Second Edition. With 24 Plates. Fcap 8vo, 5s.

THE MOOR AND THE LOCH ;

WITH HINTS ON HIGHLAND SPORTS, AND THE HABITS OF DIFFERENT CREATURES OF GAME AND PREY. By JOHN COLQUHOUN, Esq.
Second Edition. Plates. 8vo, 9s. 6d.

Natural History.

ELEMENTS OF GEOLOGY ;

OR, THE ANCIENT CHANGES OF THE EARTH AND ITS INHABITANTS, CONSIDERED AS ILLUSTRATIVE OF GEOLOGY. By CHARLES LYELL, F.G.S. *Second Edition.* With 400 Woodcuts, &c. 2 vols. 12mo, 18s.

PRINCIPLES OF GEOLOGY ;

OR, THE MODERN CHANGES OF THE EARTH AND ITS INHABITANTS, CONSIDERED AS ILLUSTRATIVE OF GEOLOGY. By CHARLES LYELL, F.G.S. *Sixth Edition.* With 250 Woodcuts, &c. 3 vols. 12mo, 24s.

SCENES AND TALES OF COUNTRY LIFE,

WITH RECOLLECTIONS OF NATURAL HISTORY. By EDWARD JESSE, Esq. *Second Edition.* With Woodcuts. Post 8vo, 12s.

GLEANINGS IN NATURAL HISTORY.

WITH ANECDOTES OF THE SAGACITY AND INSTINCT OF ANIMALS. By EDWARD JESSE, Esq. *Fifth Edition.* With Woodcuts. Fcap 8vo, 6s. 6d.

JOURNAL OF A NATURALIST.

Fourth Edition. With Woodcuts. Post 8vo, 9s. 6d.

MODERN BOTANY FOR LADIES.

A POPULAR INTRODUCTION to the NATURAL SYSTEM and CLASSIFICATION OF PLANTS. By MRS. LOUDON. With 150 Woodcuts. Fcap 8vo, 8s.

Agriculture.

THE MUCK MANUAL,

FOR THE USE OF FARMERS. A PRACTICAL TREATISE ON THE CHEMICAL NATURE AND VALUE OF ANIMAL AND VEGETABLE MANURES. By F. FALKNER, Esq. A New Edition, with a Glossary of Terms. Fcap. 8vo.

ON LAND-DRAINAGE,

SUBSOIL-PLOUGHING, AND IRRIGATION. By the Author of "British Husbandry." *Second Edition.* 8vo, 2s.

THE FARMER'S ACCOUNT-BOOK,

ARRANGED ON NEW AND EASY PRINCIPLES. By the Author of "British Husbandry." Imperial 4to, 10s.

Rural and Domestic Economy.

FARMING FOR LADIES ;

OR, PLAIN INSTRUCTIONS FOR THE POULTRY YARD, THE DAIRY AND PIGGERY. By Author of "BRITISH HUSBANDRY." Woodcuts. Fcap 8vo, 8s.

GARDENING FOR LADIES.

With Practical Instructions and Directions for every Month in the Year; and a Calendar of Operations. By MRS. LOUDON. *Sixth Edition.* Woodcuts. Fcap 8vo, 6s.

DOMESTIC COOKERY ;

Founded upon principles of Economy and practical Knowledge, and adapted for Private Families. By MRS. RUNDALL. *68th Edition, with 900 new Receipts, comprising all the IMPROVEMENTS OF MODERN TIMES.* By Miss EMMA ROBERTS. Fcap 8vo, 6s.

FAMILY RECEIPT-BOOK ;

A Collection of a Thousand valuable Receipts in various Branches of Domestic Economy. *New Edition.* Fcap 8vo, 5s. 6d.

HAND-BOOK OF NEEDLEWORK.

A Guide to every kind of Decorative Needlework, Crotchet, Knitting, and Netting. By Miss LAMBERT. *Third Edition.* 115 Woodcuts. Post 8vo, 10s. 6d.

CHURCH NEEDLEWORK ;

With Practical Remarks on its preparation and arrangement. By Miss LAMBERT. With Illustrations. Post 8vo, 9s. 6d.

MY KNITTING-BOOK.

Containing Examples selected and arranged so as to render them easy to a novice in the Art. By Miss LAMBERT. *Fifth Edition.* With Woodcuts. 16mo, 1s. 6d.

MY CROCHET SAMPLER,

With New and Choice Examples, arranged with the greatest care. By Miss LAMBERT. *Third Edition.* Woodcuts. 16mo, 2s. 6d.

Instruction and Amusement for Young Persons.



MRS. MARKHAM'S HISTORY OF ENGLAND,

FROM THE FIRST INVASION BY THE ROMANS, TO THE ACCESSION OF QUEEN VICTORIA. *Eleventh Edition*, with Woodcuts. 12mo, 7s. 6d.

MRS. MARKHAM'S HISTORY OF FRANCE,

FROM THE CONQUEST OF GAUL BY JULIUS CÆSAR, TO THE REIGN OF LOUIS PHILIPPE. *Sixth Edition*. With Woodcuts. 12mo, 7s. 6d.

BERTHA'S JOURNAL,

DURING A VISIT TO HER UNCLE IN ENGLAND; WITH A VARIETY OF INTERESTING AND AMUSING INFORMATION FOR EVERY DAY IN THE YEAR. 12mo, 7s. 6d.

PHILOSOPHY IN SPORT MADE SCIENCE IN EARNEST;

OR NATURAL PHILOSOPHY EXPLAINED BY THE AID OF THE ORDINARY TOYS AND SPORTS OF YOUTH. *Fifth Edition*. With 100 Woodcuts. Fcap. 8vo, 8s.

THE JEWESS:

A TALE OF THE BALTIC. By A LADY. *Second Edition*. With Portrait. Fcap. 8vo, 4s. 6d.

PUSS IN BOOTS.

WITH 12 ILLUSTRATIONS. SUITED TO THE TASTES OF LITTLE AND GROWN CHILDREN. By OTTO SPECKTER. 4to, 7s. 6d.

STORIES FOR CHILDREN,

FROM THE HISTORY OF ENGLAND. *Thirteenth Edition*. 18mo, 3s.

GEOGRAPHY FOR CHILDREN.

By the Author of "STORIES FOR CHILDREN." *Third Edition*. 12mo, 2s.

GOSPEL STORIES;

AN ATTEMPT TO RENDER THE LIFE OF OUR SAVIOUR INTELLIGIBLE TO YOUNG CHILDREN. *Second Edition*. 18mo, 3s. 6d.

LITTLE ARTHUR'S HISTORY OF ENGLAND.

By Lady CALLCOTT. *Sixth Edition*. With Woodcuts. 18mo, 3s.

YEAR-BOOK OF NATURAL HISTORY.

ARRANGED ACCORDING TO THE MONTHS. By MRS. LOUDON. With 40 Woodcuts. 18mo, 4s.

HISTORY OF THE LATE WAR;

WITH SKETCHES OF NELSON, WELLINGTON, AND NAPOLEON. 18mo, 2s. 6d.

Classical and School Books.

A DICTIONARY OF GREEK AND ROMAN ANTIQUITIES.
 Edited by WILLIAM SMITH, LL.D. With numerous Illustrations on Wood. (1130 pages.) 8vo, 36s.

A SCHOOL DICTIONARY OF ANTIQUITIES.
 Abridged from the larger Work, by DR. SMITH. With Woodcuts. Square 8vo. *In the Press.*

A DICTIONARY OF GREEK AND ROMAN BIOGRAPHY, AND MYTHOLOGY. Edited by DR. SMITH. Now Publishing in Monthly Parts, and to be completed in Three Volumes. Vol. I. 8vo, 36s.

A NEW CLASSICAL DICTIONARY OF ANCIENT BIOGRAPHY, MYTHOLOGY, AND GEOGRAPHY, for the Use of Schools, based upon the preceding Work. By DR. SMITH. 8vo. *In Preparation.*

BUTTMAN'S LEXICOLOGUS.
 OF, THE MEANING AND ETYMOLOGY OF VARIOUS WORDS AND PHRASES IN GREEK WRITERS. Translated by FISHLAKE. *Second Edition.* 8vo, 14s.

BUTTMAN'S IRREGULAR GREEK VERBS.
 Their Formation, Meaning, and Usage. With an Index. Translated, with Notes, by FISHLAKE. *Second Edition.* 8vo, 7s. 6d.

ÆSCHYLUS.
 THE AGAMEMNON AND CHOROPHORE. A new Edition of the Text, with Notes. By Rev. T. W. P'ERLE, D.D., Head Master of Repton School. *Second Edition.* 8vo, 9s. each.

MATTHIÆ'S GREEK GRAMMAR,
 Enlarged from the last Edition of the original. Translated by BLOMFIELD. *Fifth Edition, revised by KENRICK.* 2 vols. 8vo, 30s.

LATIN GRAMMAR FOR SCHOOLS.
 OF A *New Edition revised*, of KING EDWARD THE SIXTH'S GRAMMAR. 12mo. 3s. 6d.

GREEK GRAMMAR FOR SCHOOLS.
 OF MATTHIÆ'S GRAMMAR, abridged by BLOMFIELD. *Seventh Edition, revised by EDWARDS.* 12mo, 3s.

RUDIMENTA GRÆCA MINORA
 IN USUM SCHOLARUM. *A New Edition.* 12mo, 2s.

GRÆCÆ GRAMMATICÆ RUDIMENTA.
 PARS POSTERIOR SIVE SYNTAXIS. *A New Edition.* 12mo, 2s.

ENGLISH NOTES FOR LATIN ELEGIACS;
 By Rev. W. OXENHAM, M.A., Second Master of Harrow School. 12mo, 4s.

Mr. Murray's Hand-Books for Travellers.

HAND-BOOK FOR NORTHERN GERMANY.

HOLLAND, BELGIUM, PRUSSIA, AND THE RHINE TO SWITZERLAND.
With Map. Post 8vo, 12s.

HAND-BOOK FOR SOUTHERN GERMANY.

BAVARIA, AUSTRIA, TYROL, SALZBURG, STYRIA; AUSTRIAN AND
BAVARIAN ALPS; THE DANUBE, FROM ULM TO THE BLACK SEA.
With Map. Post 8vo, 10s.

HAND-BOOK FOR SWITZERLAND.

THE ALPS OF SAVOY AND PIEDMONT. With Map. Post 8vo, 10s.

HAND-BOOK FOR NORTHERN EUROPE.

DENMARK, NORWAY, SWEDEN, AND RUSSIA. With Maps and Plans.
Post 8vo, 12s.

HAND-BOOK FOR MALTA AND THE EAST.

THE IONIAN ISLANDS, GREECE, TURKEY, ASIA MINOR, AND CON-
STANTINOPLE. With Maps. Post 8vo, 15s.

HAND-BOOK FOR EGYPT AND THEBES.

With Directions for Travellers in that Country, and on the Overland
Passage to India. By Sir GARDNER WILKINSON. With Map and
Woodcuts. 2 vols. 8vo, 42s.

HAND-BOOK FOR NORTHERN ITALY.

STATES OF SARDINIA, GENOA, THE RIVIERA, VENICE, LOMBARDY,
AND TUSCANY. With Map. Post 8vo, 12s.

HAND-BOOK FOR CENTRAL ITALY AND ROME.

THE PAPAL STATES, AND THE CITIES OF ETRURIA. With Map.
Post 8vo. 15s.

HAND-BOOK OF ITALIAN PAINTING.

THE SCHOOLS OF ART IN ITALY. From the German of KUGLER
Post 8vo, 12s.

HAND-BOOK FOR FRANCE AND THE PYRENEES.

NORMANDY, BRITTANY, THE RIVERS LOIRE, SEINE, RHONE, AND
GARONNE; THE FRENCH ALPS, DAUPHINE', AND THE PYRENEES.
With 5 Maps. Post 8vo, 12s.

HAND-BOOK FOR SPAIN.

ANDALUSIA, GRANADA, CATALONIA, MADRID, &c With Ma
Post 8vo. (*In the Press.*)

Cheap Literature for all Classes.

THE COLONIAL AND HOME LIBRARY,

Published Monthly. Post 8vo, 2s. 6d.,

IS printed in good legible type, on superfine paper, and is designed to furnish all classes of Readers with the highest Literature of the day, consisting partly of original Works, and partly of new editions of popular Publications, at the lowest possible price. It is called for in consequence of the Acts which have recently passed the British Parliament for the protection of the rights of British authors and publishers, by the rigid and entire exclusion of foreign pirated editions.

In order, therefore, that the highly intelligent and educated population of our Colonies may not suffer from the withdrawal of their accustomed supplies of books, and with a view to obviate the complaint, that a check might in consequence be raised to their intellectual advancement, Mr. Murray has determined to publish a series of attractive and useful works, by approved authors, at a rate which shall place them within the reach of the means not only of the Colonists, but also of a large portion of the less wealthy classes at home, who will thus benefit by the widening of the market for our literature: and the "Colonial Library" will consequently be so conducted that it may claim to be considered as a "Library for the Empire."

Mr. Murray's "Colonial Library" will furnish the settler in the backwoods of America, and the occupant of the remotest cantonments of our Indian dominions, with the resources of recreation and instruction, at a moderate price, together with many new books within a short period of their appearance in England; while the student and lover of literature at home, who has hitherto been content with the loan of a book from a book club, or a circulating library, may now become possessed of the work itself, at a cost a little beyond that entailed by either of the methods above mentioned.

The series of Works designed to appear in Mr. Murray's "Colonial and Home Library" will be selected for their acknowledged merit, and will be exclusively such as are calculated to please the most extensive circle of readers.

[For List of Works see next page.]

Books already Published.

BORROW'S BIBLE IN SPAIN.

"As a book of adventures—the most extraordinary for a long time past."
—*Quarterly Review*.

BISHOP HEBER'S JOURNAL IN INDIA.

"The most perfectly charming book we ever read."—*Examiner*.

IRBY AND MANGLES' TRAVELS IN THE EAST.

"One of the most interesting and popular works of the present century."
—*Aberdeen Journal*.

DRINKWATER'S SIEGE OF GIBRALTAR

"A book replete with interest and information."—*United Service Magazine*.

DRUMMOND HAY'S MOROCCO AND THE MOORS.

Strange tales of mighty robbers and daring exploits with wild beasts."
—*Cheltenham Chronicle*.

LETTERS FROM THE SHORES OF THE BALTIC.

"Charming descriptions; full of ease and freshness."—*Examiner*.

THE AMBER WITCH.

"If it be a fiction, it is worthy—of De Foe."—*Quarterly Review*.

SOUTHEY'S CROMWELL AND BUNYAN.

"Models of what biography ought to be."—*Dublin Freeman's Journal*.

NEW SOUTH WALES. By Mrs. MEREDITH.

"Derives interest from being a lady's view of New South Wales."—*Spectator*.

BARROW'S LIFE OF SIR FRANCIS DRAKE.

"This interesting and instructive volume."—*Edinburgh Review*.

FATHER RIPA'S RESIDENCE AT PEKIN.

"As curious a work as Borrow's Bible in Spain."—*Spectator*.

LEWIS'S WEST INDIAN JOURNAL.

"Highly amusing stories of actual Jamaica life."—*Quarterly Review*.

SKETCHES OF PERSIA.

"No one can read 'Sketches of Persia' (by Sir John Malcolm), without feeling that the author has made a valuable addition to our stock of knowledge. New and important views of the Persians as a nation are here presented with all the interest, without the tendency to caricature, of our amusing friend Hajji Baba."—*Quarterly Review*.

Bradbury & Evans, Printers, Whitefriars.







THE BORROWER WILL BE CHARGED
AN OVERDUE FEE IF THIS BOOK IS
NOT RETURNED TO THE LIBRARY ON
OR BEFORE THE LAST DATE STAMPED
BELOW. NON-RECEIPT OF OVERDUE
NOTICES DOES NOT EXEMPT THE
BORROWER FROM OVERDUE FEES.



